IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10640 OF 2000

SUO MOTU
vs.
STATE OF GUJARAT & ORS.

WITH
CIVIL APPLICATION No. 11020 OF 2000
SUMANGALAM BUILDING OCCUPIER'S ASSOCIATION
vs.
SUO MOTU

WITH
CIVIL APPLICATION No. 788 OF 2001
ICICI BANK LIMITED
vs.
STATE OF GUJARAT & ORS.

WITH
CIVIL APPLICATION No. 853 OF 2001
HDFC BANK LIMITED
vs.
STATE OF GUJARAT & ORS.

WITH
CIVIL APPLICATION No. 962 OF 2001
KAMLESH P. SAVALIYA & ORS.
vs.
SUO MOTU & ORS.

WITH
CIVIL APPLICATION No. 963 OF 2001
RAJNIKANT J. MEHTA & ORS.
vs.
SUO MOTU & ORS.

WITH
CIVIL APPLICATION No. 966 OF 2001
KAMINIBEN VAMANBHAI BAROT & ORS.
vs.
SUO MOTU & ORS.

WITH
CIVIL APPLICATION No. 967 OF 2001
MANEKCHAND C. SADHU & ORS.
vs.
SUO MOTU & ORS.

WITH
CIVIL APPLICATION No.1219 OF 2001
SHASHANG INFRASTRUCTURE PVT. LTD.
vs.
STATE OF GUJARAT & ORS.

WITH
CIVIL APPLICATION No. 1287 OF 2001
SHASHANG INFRASTRUCTURE PVT. LTD.
vs.
STATE OF GUJARAT & ORS.

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SUO MOTU

Versus

STATE OF GUJARAT

Appearance:

SPECIAL CIVIL APPLICATION No.10640 OF 2000
MR SB VAKIL for learned Amicus Curiae
SUO MOTU for Petitioner No. 1
MR ARUN D OZA GOVERNMENT PLEADER for Respondent No. 1
NOTICE SERVED BY DS for Respondents No. 1,6-7-11
SINGHI & CO for Respondents No. 2-3,21,23
M/S TRIVEDI & GUPTA for Respondent No. 4
MR DN PATEL for Respondent No. 5
MR MD PANDYA for Respondent No. 8
MR AMIT M PANCHAL for Respondents No. 9,25

MR PC KAVINA for Respondents No. 10-11,15,17,22,29
MR KETAN A DAVE for Respondents No. 12-14,16,18,26-27,30
MR BS PATEL for Respondents No. 19-20
MRS RANJAN B PATEL for Respondents No. 19-20
MR RJ GOSWAMI for Respondents No. 24
MR PK JANI for Respondents No. 25
MR MEHUL H RATHOD for Respondents No. 27,28
MR S TRIPATHY for Respondents No. 27

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 26/04/2002

C.A.V. JUDGEMENT

(Per : MR.JUSTICE B.C.PATEL)

[#. After conclusion of hearing, judgment in the matter was reserved, and dictation and typing of the judgment was in progress. However, in the meanwhile, Ms. Gauri Kumar filed a Civil Application No. 12100 of 2001 and we could not proceed further and complete the judgment. Since this Bench is assembling only for half of a day on some Fridays for taking up specially assigned matters, the aforesaid application could be disposed of only on 19th January 2002. Hence some delay in completing the judgment occasioned, and after disposal of the aforesaid Civil Application, we thought it fit to proceed with the judgment in this matter in the open Court. Thereafter, certain portions of this order were dictated in the open Court. Due to lack of time on account of pressure of the regular court work, the matter was again kept as C.A.V. and is pronounced today. In this complex situation, the date of this judgment shall be deemed to be the date of pronouncement of the judgment.]

GENESIS OF THIS PROCEEDINGS:

#. Xerox copy of a Government file, including various confidential letters, along with a forwarding letter purported to have been signed by one Piyush Soni, was forwarded to this Court by Speed Post. The subject matter of the file was irregularities and illegalities in connection with allotment of land to Sumangalam Co-Operative Housing Society. The Court (Coram: B.C. Patel & C.K. Buch, JJ.), which was taking up Public Interest Litigation at the relevant time, after perusing the file minutely, passed an order on 6.10.2000, excerpting certain portions from the file and issuing

notice to the Chief Secretary, returnable on 16.10.2000. On the returnable date, i.e. on 16.10.2000, a request for time was made by learned Additional Advocate General Mr. Shelat (as he then was). The Court, while granting the time, also issued notice to the Chairmen and Secretaries of the three Societies, Ahmedabad Urban Development Authority (AUDA, for brevity, hereinafter), Registrars of Co-Operative Societies, Gandhinagar and Ahmedabad and to certain IAS Officers.

#. On behalf of the Government, Chief Secretary filed an affidavit dated 10.11.2000 and did not deny the authenticity of the excerpts in the order dated 6.10.2000 but the tenor of the affidavit indicated that what is conveyed to the Court through the xerox copy of the entire Government file is correct and the Government itself made certain efforts to unearth the scandal and inspite of repeated efforts even after once closing the file on a note prepared by the General Administration Deptt. (page 17), the file was re-opened, but the efforts could not fructify. Ultimately, the Chief Secretary in his affidavit stated that the Government "will abide by the orders that may be passed by this Honourable Court" and "all necessary files and record will be made available to the Hon'ble Court for perusal". In the circumstances, the Court decided to proceed further with the matter.

INTERLOCUTORY ORDER OF THE HIGH COURT ON 16.11.2000

[#. This Court passed the following interim order on 16.11.2000:

"In view of what is stated hereinabove, apart from the directions contained in the text of this order hereinabove, we would like to pass the following interim order at this stage.

(1). Notice be issued to all the plot holders, to be served through the Secretary of the respondent No.4 Society.

(2). State is directed to place on record the relevant material pertaining to the plots allotted at Gandhinagar to the officers who are members of the Respondent No. 4 Society.

(3). The buildings, which are constructed and are not in occupation, shall be sealed by AUDA with immediate effect.

(4). So far as the buildings which are erected and are being used for residential purposes, the members of the Respondent No.4 Society shall place before the court the nature of transfer of possession. If the property is given on rent or on lease or is transferred, the amount of rent shall be deposited in a separate bank account to be opened by AUDA in a nationalized Bank and it shall deposit the amount so collected in the Bank Account. The Bank, on the amount being deposited, shall automatically invest it in a recurring Fixed Deposit for 46 days till further orders. We shall pass further orders for the properties which have been transferred in any mode other than rental, lease etc. after the details are placed before us by the concerned members.

(5). So far as the buildings which are used for the purposes other than residence is concerned, it is directed that on the expiry of the period of notice issued by AUDA if the occupiers on their own do not stop its use, AUDA shall seal the premises.

(6). As regards the plots on which no construction is made, no one shall carry out any construction without the permission of this Court. AUDA shall not permit any construction without the permission of this Court or till further order in this regard is passed by this Court.

(7). So far as the buildings, which are under construction, are concerned, AUDA shall place a report before this Court indicating the nature and stage of the construction.

(8). District Registrar of Co-Operative Societies, Ahmedabad and Gandhinagar are directed to place before this Court as to what action they intend to initiate against the members of these Societies, who have filed affidavits before them. The report shall be filed within a period of 15 days from today.

(9). The Respondent No.4 Society is directed to produce bye laws of the Society.

(10). The Respondent No.4 Society is directed

to give details of its members at the time of its inception.

(11). The Respondent No.4 Society shall also furnish details as to when the persons who were not members initially, became members.

(12). The Government and AUDA to produce application made by Respondent No. 4 Sumangalam Cooperative Society (Bodakdev) under section 20 of the Urban Land Ceiling Act and for allotment of land respectively. They shall also indicate as to in absence of any application, whether all the aspects were taken into consideration for determining the quantum of land to be allotted to the society in question, and if so, what were those aspects which were considered. As is born out from the record, AUDA had allotted 16571 sq. mtrs. of land on 1.3.1990.

(13). The authorities shall also submit in detail as to what are the criteria followed by the authorities for determining the quantum of land to be allotted in such cases."

#. The matter was carried to the Supreme Court and the Apex Court, (Coram: V.N. KHARE & SANTOSH HEGDE, JJ.) on 4.12.2000 passed the following orders:

"Permission to file SLP is granted.
Heard counsel for the parties at length.
It is not disputed that the High Court is seized with the matter. The directions that are impugned in these petitions are interlocutory in nature and final order would be passed after the opportunity to the persons who are likely to be affected by our order that may be passed finally. We are, therefore, not inclined to interfere with the direction Nos. 1,2,4,6 to 13. So far as direction Nos. 3 and 5 are concerned, they would remain suspended till the matter is heard and final order is passed by the High Court. However, so far direction No. 3 is concerned, the building may not be sealed, but the owners of such building shall not use the building for commercial purposes hereafter. We are also of the view that the High Court may direct for sending notices to those persons who are likely to be adversely affected by supplying the materials which it seeks to rely, if not send already. This order of ours suspending direction

Nos. 3 and 5 shall ceased to have effect as and when any final order is passed by the High Court. Further it may be clarified that this order shall not come in the way of the High Court in passing any order that it may deem fit in the facts and circumstances of the case.

With these directions special leave petitions are disposed of."]

PUBLIC NOTICE - SUMMONS & QUESTIONS FOR DECISION:

#. In this matter, a public notice was published on 23rd December 2000 in two leading newspapers, one English and one Gujarati, published from Ahmedabad calling upon all the members of the Respondent No. 4 Society / allottees of the plots / occupiers of the plots and superstructures put upon the plots, to appear before the Court and file all necessary documents on or before 9th January 2001, either personally or through an advocate duly instructed to argue the case, when the Court will, amongst other questions, decide the following questions.

(1). Possession taken by the Respondent No. 4 Society in the name of Sumangalam Co-Op. Society, Bodakdev, Ahmedabad, by using almost similar name to that of Respondent No.2 and without disclosing this fact - whether it is in accordance with law, and if not what order?

(2). Whether the permission granted by AUDA to develop the land is in accordance with law or not, and if not, what order?

(3). Transfer of plots - Apart from the fact that it was obtained contrary to the provisions of law, can it be subsequently transferred? Assuming for the sake of arguments that it was in accordance with law, then, in view of the lease deed, whether it can be said that the transfer is contrary to provisions of law or not, and if so, what order.

(4). Whether earlier judgment in Special C.As. No.3082/91, 3781/91 was obtained by practising fraud or by suppressing relevant and material facts by the respondent No.4 Society or not, so as to render the judgment not binding?

(5). At the relevant time, Chairman of AUDA was a member of the Respondent No.2 Co-Op. Society registered at Gandhinagar; Office bearers of the Society were allotted plots at Gandhinagar; Still they made demand of plots at Ahmedabad and obtained the same from AUDA. Can this be said to

have been obtained by undue influence and by playing fraud or not, keeping in mind that :-

- in the earlier proceedings it was never disclosed before the Court that the plots shall be used for the purpose of construction of offices or other commercial purposes; on the contrary it was disclosed that the plots shall not be used for purposes other than residence; and,
- the members were allotted plots at Gandhinagar, and ,
- possession of the land was not taken by the Society to which AUDA allotted the land, and,
- it was never disclosed before the Court that there were three different Societies in existence and the plots in question were allotted to Respondent No.2 Society and not to Respondent No.4 Society.

(6). Assuming that the land could have been allotted to the members of the Respondent No. 4 Society, then as per Government resolution, each member was to be allotted a plot of land admeasuring 200 sq. mtrs. and not more, keeping in mind the policy of the government at the relevant time. In violation of the resolution, plots were allotted. In any case, Respondent No. 4 Society and its members were required to fill in Form No. 6 for exemption under the provision contained in Urban Land (Ceiling & Regulation) Act. However, one of the member of Respondent No.4 Society, working in the relevant department as Secretary, put up a note that the form is not required to be filled in. Thus, the breach has been committed by not filling the form and by taking land in excess of 200 sq. mtrs. What is the effect of it in the eyes of law in the present case?

(7) Whether AUDA has passed any resolution for grant of lease in question to Respondent No.4 Society, if not, what order?

(8) Whether the Respondent No.4 Society obtained the lease from AUDA by misrepresentation and fraud?

(9) Whether the allotment of the plots by the Respondent No.4 Society to its members are in contravention of the provisions of the Gujarat Co-Operative Societies Act, 1961 and the Urban Land (Ceiling & Regulation) Act, 1976 and order of exemption under sec. 20 passed thereunder?

(10) Whether Respondent No.4 Society and its members have acted in breach of the terms and conditions of the lease and the lease is liable to be cancelled?

(11). Whether breach of provisions contained in Co-Operative Societies Act is committed, and whether affidavits filed before the authorities contain correct averments? If not, what order?

MUDDLING NAMES OF THREE SOCIETIES

#. Three Societies having almost similar names, formed by top ranking I.A.S / I.P.S. Officers are involved in the present case. Some persons are common members in all the three Societies. The details regarding the three Societies are as under:

(i). The Sumangal Co-Op. Housing Society Limited, Gandhinagar - having registration No. 9675 dated 10.10.1986. This Society is hereinafter referred to as the respondent No.2 Society. Registration of this Society was cancelled on 9.12.1996 [page 21]. The following persons were the promoters at the time of registration of this Society [page 389] :-

1. Sudhir Mankad
2. Ms. Anuradha Mansingh
3. C.J. Jose
4. S. Jagadeesan
5. D. Kishore Rao
6. P. Paneervel
7. B.P. Meena
8. G.C. Raigar
9. Smt. Sudha Anchalia
10. Balwant Singh
11. K.S. Sugathan
12. A. Prasad

A list containing names of the members of the Respondent No.2 is at pages 108 to 110 - having 77 members, which is supplied to AUDA (see page 63). Another list of members as on 10.10.1986 of the Respondent No.2 Society is at pages No.390 to 392 having 94 members.

(ii). The New Sumangal Co-Op. Housing Society Limited, Taluka Daskroi, Ahmedabad having registration No. 13338 dated 22.5.1989. This Society is hereinafter referred to as the respondent No.3 Society. Registration of this Society was cancelled on 9.12.1996. The following persons are the members of this Society (page 360):

1. S. Jagadeesan
2. Gauri Kumar
3. D.J. Pandian
4. R.D. Tamhane
5. K.V. Joseph
6. K.V. Bhanujan
7. K. Kumarswamy
8. C.P. Singh
9. Surendra N Sinha
10. C.J. Jose
11. C.I. Joy
12. A.K. Pradhan
13. A. Prasad
14. B.K. Bakshi
15. T.C.A. Rangadurai
16. Maheshwar Sahu
17. R.K. Tripathi

(iii). Sumangalam Co-Operative Housing Society Limited, Bodakdev having registration No. 14292 dated 5.7.1990. This Society is hereinafter referred to as the respondent No.4 Society. The following persons were the promoters at the time of registration of the society [page 489].

1. S. Jagadeesan
2. A. Prasad
3. C.J. Jose
4. M. Sahu
5. D.J. Pandian
6. K.V. Bhanujan
7. A.K. Pradhan
8. R.D. Tamhane
9. S.N. Sinha
10. R.K. Tripathi

A list containing additional 25 names of its members as on 13.9.1990 is at pages No.490 and 491. Another list containing additional 19 names (five persons as on 13.9.1990 and 14 persons as on 13.4.1992) is at page 492.

FACTUAL MATRIX :

#. Shri C.J. Jose, as President of Respondent No.2 Society addressed a letter (undated) to AUDA (page 446) stating that the Society (Respondent No.2) "is a housing co-operative of Government employees mostly of the Gujarat Govt. Eventually about 100 Govt. employees of

various categories would be members of the Society". As it appears from the Rubber Stamp on the said letter, the said letter was received by AUDA on 16th July 1987. It is requested in the said letter that the respondent No.2 Society may be allotted land admeasuring 6651 sq. mtrs. from F.P. No.707 TPS Bodakdev, 12514 sq. mtrs. land from F.P. No. 695 TPS Bodakdev, 8693 sq. mtrs. of land from Survey No. 189 and 190 from TPS Vastrapur, 9208 sq. mtrs. from survey No. 199 TPS Vastrapur. It was also requested in the said letter to fix the rate of the land at Rs.300/- per sq. mtrs. On the said letter, Chairman of AUDA (Shri A. Prasad) put up a note, which reads as under:

"Please process this application. We may place this before the Board on 8/87. The consideration may:

(1). No sale for 5 years after purchase.

(2). Only confirmed Government officers can get.

(3). Those who already own homes in the certified area (as per PWD Norms) will not be entitled.

(4). Construction should be completed in two years as per AUDA regulations.

(5). The land may allotted having 15% administration charges development charges.

(6). Plot will be of 150 sq. mtr. size as the Society wants tenement to be constructed.

Sd/- 16/7
Chairman"

#. On 21st July 1987, another letter was addressed by the President of the respondent No.2 Society to AUDA (page 447) stating that "eventually about 150 Govt. employees of various categories would be members of the Society" and requested for allotment of freehold land for housing. It is further indicated in this letter that "each member would have 150-200 sq. mtrs. land". It is also requested in the letter to "kindly fix the rates for the land at or around Rs.300.00 per sq.mtr.".

#. On 24th November 1987 another letter is addressed by the said Shri Jose to AUDA (page 448) and it is stated as under:

> "the Society is going to have about 100 members. Consequently it will not be possible for us to accommodate every member in the land at bearing survey No. 696 or in the land offered to us by your letter dated 24.11.87. We understand that T.P. Plot 695 is designated for neighbourhood centre which would admit variety of uses like garden, play ground, library etc. We request that we may be granted 4000 sq. mts. of this land on condition that part of this land is used for purposes within the meaning of neighbourhood centre".

#. Another letter was addressed by Shri C.J. Jose as Chairman of the respondent No.2 Society on 24.11.1987 (page 449) wherein it is indicated as under:

> "The Sumangal Co-Operative Housing Society is prepared to purchase land bearing Survey No. 189 and 190 (Part) and survey No. 199/1, 2, 3 of Vastrapur at the price indicated by you."

#. Another letter is addressed by the said Shri C.J. Jose on 24.11.1987 as Chairman of the respondent No.2 Society to AUDA (page 450) wherein it is stated as under:

> "We have been offered land bearing Survey No. 180 and 190 (part) and Survey No. 199/1, 2, 3 of Vastrapur village and land is valued at Rs.602 to 700 per sq. mtr. .... We were told that AUDA would be granting us land bearing Survey No. 707 of Bodakdev T.P. Scheme. However, it is understood now that this land is not likely to be available to us due to zone restriction. We therefore request you to allot us TP Plot No.696 of Bodakdev near Drive-in Cinema."

#. Ultimately, in the year 1987, to be precise on 9.12.1987, a decision was taken by AUDA to allot land to the respondent No. 2 Society. Copy of the resolution No. 59 (87-88) dated 9.12.1987 passed by the Land Committee of AUDA is produced before the Court by learned counsel for AUDA (page 564). Reading the same, it appears that AUDA took a decision to allot lands bearing Survey No. 189, 190 Paiki of Vastrapur admeasuring 8693

sq. mtr., Survey No. 199/1/2/3 of Vastrapur admeasuring 9208 sq. mtr and Bodakdev Final Plot No. 694 admeasuring 2739 sq. mtr., F.P. No. 695 admeasuring 12516 sq. mtr and F.P. No. 696 admeasuring 5239 sq. mtr. on lease for 90 years. The land was to be allotted subject to certain terms and conditions, and the price was to be determined by the Chief Town Planner. The decision has been communicated to the President of respondent No.2 Society vide letter No. Estate/Vashi/2267/16836 dated 10.12.1987 (page 566). By two different letters dated 16.6.1988 and 21.7.1988, Shri C.J. Jose, Chairman of the respondent No.2 Society made representations to reduce the rates. Thereafter, on 16.6.1989, the respondeat No.2 Society made a payment of Rs.6,65,000/-, vide AUDA's receipt No.38302 dated 16.6.1989 (page 571).

##. The respondent No.2 Society did not comply with the conditions except making nominal payment of Rs.6,65,000-00 on 16.6.1989, and therefore, in its 118th Board Meeting held on 07.10.1989, by resolution No. 50(89-90), AUDA resolved to refund the amount deposited by the respondent No. 2 and to dispose of the lands by pubic auction (page 557 & 572). Subsequently, AUDA made an order dated 1.12.1989 to refund the amount to the Respondent No.2 Society (page 576). Thereafter, the respondent No.2 Society, clearly mentioning its registration No. 9675/86 made an application (page 577) on 21.12.1989 signed by S. Jagadeesan requesting to reconsider the price and allot the land in response of cancellation of allotment. It is further stated in the said letter that the Society bearing registration No. 9675/86 has paid the amount of more than Rs.6 lakhs and therefore they have preferential right over the land. Pursuant to this, AUDA in its 119th Board meeting, held on 19.1.1990 vide resolution No. 63 (89-90) [page 580] reconsidered its earlier decision and decided to allot Final Plots No. 694, 695 and 696 Bodakdev TP Scheme No. 1/B, admeasuring 16,571 Sq. Mtr. land to the Society which applied to reconsider its earlier decision, i.e. respondent No.2 Society. The said decision was communicated by AUDA by letter No. Estate/Vashi/267/1578 dated 1.3.1990, (page 581-2). Pursuant to this reconsideration, the Society paid a sum of Rs.1,03,85,000-00 by Cheque No. 1426322 of State Bank of Saurashtra (page 583) and AUDA issued its receipt No. 44414 dated 30.5.1990 (page 584).

##. Thereafter, on 1.6.1990, possession of the land admeasuring about 16,571 sq.mtrs. was given to the Society which made payment of Rs.6,65,000/- initially and

Rs.1,03,85,000-00 subsequently, and the possession receipt is produced on the record at page 585.

##. It is worth noting here that till this time, the respondent No.4 Society was not in existence at all, since it is registered on 5.7.1990.

##. Subsequently on 26.02.1991 in the 123rd meeting of AUDA, a resolution No. 31 (90-91) was passed allotting additional 3923 sq.mtrs. of land, and, possession of land admeasuring about 3923 sq.mtrs. was given to Respondent No.4 at the price of Rs.26,70,600-00 [page 453]. Thus, total 20494 sq.mtrs. of land was allotted to the society.

##. Reading the letters of requests etc. and the resolutions for allotting the land, it is clear that the lands were allotted on a lease for 90 years. Copies of the lease agreements are produced on record at pages 71 to 97. There are various blanks in the lease deeds. Be that as it may, the lease agreement is executed by respondent No.4 Society having registration No. 14292 dated 5.7.1990, though it never applied for the land and though it never made any payment! Subsequently, the lease deed is executed between AUDA and the respondent No.4 Society having registration No. 14292.

##. Reading the records, it is crystal clear that out of 54 members, who are allotted lands by Respondent No.4 - Sumangalam Society [page 47 to 49], 42 persons were also allotted lands by the Government at Gandhinagar [page 658 to 661].

PREVIOUS PROCEEDINGS :

#. It appears that earlier two petitions were filed in this Court being Special Civil Applications No. 3082 of 1991 and 3781 of 1991 interalia praying to quash and set aside the action of grant of land bearing Final Plot No. 694, 695 and 696 of TP Scheme No.1.B Bodakdev situated at Drive-in Road, Ahmedabad at a throw away price. The Court was persuaded by the Secretary of the Society by filing an affidavit interalia pointing out that the contentions raised by the petitioners were baseless; The Society was not acting at the behest of any builder; There was no question of construction of any super market or the land being used for commercial purpose. It was submitted before the Court that they are I.A.S./I.P.S. officers and they require land for the purpose of residence only. We called for the record and proceedings of the aforesaid petitions. In Special Civil Application

No. 3082 of 1991, Mr. S. Jagadeesan stated in his affidavit as under:

"4.2 The respondent society was basically formed with a view to providing for some permanent housing arrangement for the Government servants who are the members of the respondent society so that in a form of society they can effectively negotiate with all the concerned authorities. For this purpose, the respondent society started corresponding with the respondent No.1 authority right from year 1987 for the allotment of a suitable land where it can get constructed residential premises for its members."

##. Thus, the Court was conveyed that the land was required for housing purpose by the top ranking IAS/IPS officers for the purpose of residence only. It must be noted at this juncture that since 1987 demand was made by the Society. Question is, by which Society? Respondent No.2 or Respondent No.4? It is clear from the record that demand was by respondent No.2 Society and not by respondent No.4 Society. The Division Bench was persuaded to believe that respondent No.4 was requesting since 1987. In fact, before the Division Bench, true facts about application made by respondent No.2, payment made to AUDA by respondent No.2 and possession handed over to respondent No.2 were suppressed. It was also not stated as to when respondent No.4 came into existence. Had it been pointed out to the Court that the land is to be utilised for commercial purpose, the Court would have taken a different view. We say so because in Judgment dated 24.9.1991, the Court (Coram: G.N. Ray, C.J. & C.K. Thakkar, J.) in paragraph 13 has observed as under:

"13. We are also not impressed by the contention that there is change of use or purpose as contended by the petitioners. It is submitted that the land is reserved for Public Housing and District Neighbourhood, and, therefore, no commercial use of the land is permissible. However, looking to the evidence on record, there is nothing to show that the land will be used for commercial purpose or construction of Super Market."

(Emphasis Supplied)

#. Thus, the Court accepted the say that allotment was for the purpose of residential houses for the members of the Society only and it will not be used for commercial

purpose or construction of supermarket. Thus, even before the Court in the earlier petitions, the clear-cut case was that the land was required only for building residential premises for the officers.

ACTION AT GOVERNMENT'S END:

##. In his affidavit dated 10th November 2000, the Chief Secretary pointed out that the then Additional Chief Secretary to the Government (Revenue), in view of the the press report dated 9.5.1993 tried to collect necessary and relevant information. The said officer in the capacity as the then additional Chief Secretary to Government (Co-Operative) was required to deal with the subject matter also. After examining the material collected, he submitted a detailed note of the observations to the Government on 3.7.1995 on the various irregularities committed by Sumangalam Societies. The Honourable the Chief Minister took a decision on 12.7.1995 to entrust a detailed inquiry in the matter to Shri P.V. Swaminathan, IAS, the then Principal Secretary to the Government, Panchayat & Rural Housing Board. Shri Swaminathan submitted his preliminary report in the affairs of the Sumangalam Societies on 29.9.1995. There is voluminous record. He was of the view that as clarifications were required to be called for in regard to plots allotted to Shri Jagadeesan, L Mansingh, O. Ravi. Finally, he expressed an opinion that an inquiry would take quite some time, and since he was retiring on 30th Sept. 1995, it was not possible for him to proceed further with that inquiry.

##. Since the report was preliminary inquiry report, it was absolutely necessary to entrust the inquiry to some other officer. The Honourable the Chief Minister decided on 2.5.96 to entrust the inquiry to Shri V. Krishnamurthy, IAS, the then Principal Secretary to the Government, Home Department. Simultaneously, it was decided to ask AUDA to take necessary action against Sumangalam Co-Operative Societies if there was any violation of laws of AUDA for breach of conditions for allotment of land. In view of the report of Shri Swaminathan, Shri Krishnamurthy was requested to give his preliminary report to the Government on 10.5.1996. However, he did not complete the inquiry before his retirement. The Honourable the Chief Minister again decided on 6.11.1996 to entrust further inquiry and Shri R.P. Rathod, IAS was requested to conduct the inquiry by letter dated 18.11.1996. Shri Rathod disclosed his inability to accept the work. It was suggested that inquiry may be entrusted to Smt. Nethra Shinoy.

Suggestion was made by Chief Secretary in his note dated 29.4.1997. Smt. Nethra Shinoy was at the relevant time Commissioner of Departmental Inquiries. It seems that in the meanwhile Shri Varesh Sinha, Secretary of the Respondent No.4 Sumangalam Society made a representation to the Honourable the Chief Minister and the General Administration Department. It appears that on 29.7.1997, GAD submitted the file to the Government and it was suggested that the matter deserves to be closed as nothing objectionable was found with reference to the representations against the Society. The said note was approved by the then Honourable the Chief Minister on 29.7.1997, i.e. on the very same day. Subsequently, the file was recalled on 15.07.1998 and the Honourable the Chief Minister directed the Chief Secretary to discuss the matter. It transpires that after the discussion, ultimately the Principal Chief Secretary to the Honourable the Chief Minister submitted the file to the Honourable the Chief Minister and he recorded on 10.7.1998 that seven points referred to in the Chief Secretary's Note dated 6.8.1998 require a careful study. For action, it was suggested that points should be studied and details be submitted. It is thereafter the Honourable the Chief Minister carefully considered the matter and issued orders on 15.9.2000 that the facts of the case required to be ascertained before giving any final order in the matter, and the file was sent to the Chief Secretary.

##. From the affidavit it transpired that there were irregularities. Even AUDA was called upon to take action. Three officers were asked to complete the inquiry but ultimately on the notes of the Secretary of the respondent No. 4 Society, a decision was taken and the file was closed, but again the matter was discussed. It is in view of the aforesaid affidavit indicating involvement of the highest officers to make inquiry into the matter but despite sufficient opportunities inquiry was not completed by any Inquiry Officer. Therefore, the Court thought it fit to proceed further with the matter.

AUDA'S STAND - POSSESSION WAS GIVEN TO RESP. NO.2:

##. AUDA in its affidavit has pointed out that "AUDA has handed over the land to the Society which has applied for the land" (see page No.429). Applications dated 16.7.87 and 21.7.1987, 24.11.87 (page No.446 to 450) are by the Respondent No.2 Society. Possession of the land was given on 01/06/1990 to respondent No.2, and at the relevant time, respondent No.4 Society was not in existence at all. Thus, it is clear that possession of

the land was handed over to the Respondent No.2 Society.

##. It is pertinent to note here that the letter of handing over possession and taking possession are of 1.6.1990; That the Respondent No.4 Society was registered on 5.7.1990 and therefore was not in existence on that date; That the name of the respondent No.3 Society is 'New Sumangal' Co-Op. Housing Society and not 'Sumangalam' Society. The decision cancelling allotment of land to the Respondent No.2 Society was reconsidered. Possession of the land was given on 1.6.1990. Hence, it is clear that the land was allotted to respondent No.2 Society.

##. AUDA in its affidavit at page 559 has again conclusively stated in this regard as under:

> "I submit that thus under these circumstances, the Hon'ry Secretary of Sumangalam Co.Op. Housing Society (Registration No. 9675/86) who had asked for the land, was handed over the possession of the land".

Hence the respondent No.4 Society (having registration No. 14292) had no right whatsoever either to take possession of the land or to retain it. The office bearers of the respondent No. 4 by impersonating as office bearers of the Society which applied for the land and which was allotted the land, and by adopting dubious methods, have taken possession of the land.

WRONG STATEMENT OF RESPONDENT NO.2 :

##. However, on behalf of the respondent No. 2 Society which was registered at Gandhinagar, Ms. Gauri Kumar, I.A.S, Managing Director of Gujarat Agro Industries Corporation, a Government of Gujarat Undertaking, has filed an affidavit [page 20] inter alia stating that the respondent Society did not obtain any land to fulfill its object; The District Registrar, by its communication dated 9.12.1996 made an order of winding up of the Society and the Registration was thus cancelled. Similar affidavit is also filed by the respondent No.3, New Sumangalam Housing Society Limited. Neither AUDA nor the respondent No.4 Society has placed before us the application submitted by the Respondent No.4 Society for allotment of land or the allotment order in favour of the Respondent No.4 Society. It is not the case of AUDA that respondent No.4 made application and that possession was handed over to respondent No.4. It is the case of AUDA that the possession was handed over to Respondent No.2

(pg. 559).

##. By resolution dated 19.1.1990, AUDA decided to give land as per resolution to Respondent No.2 herein. It is also indicated in possession receipt that the sum of Rs.6,65,000/- has been received on 16.6.1989 and the sum of Rs.1,03,85,000/- on 30.5.1990 from the Society (Respondent No. 2 Sumangal Co-Op. Housing Society Ltd. that was in existence). It is an admitted position before us that when the application for allotment of land was made to AUDA, Sumangalam Co-Op Society Limited having registration No. 14292 dated 5.7.1990 (Respondent No.4) was not in existence at all; The said application was made by respondent No.2 Sumangal Co-Op. Society Limited, Gandhinagar having registration No. 9675 dated 10.10.1986. However, to a pointed question as to which Society made the payment to AUDA which runs into more than Rs.1 Crore, it was specifically stated that admittedly the amount was not paid by the Respondent No. 4 Society which was registered on 5.7.1990.

##. Despite the fact that possession was given to Respondent No.2 Sumangal Co-Op. Housing Society it has later on stated on oath that "After its incorporation and till the year 1995, this respondent (namely, Sumangal Co-Op. Housing Society Ltd.) did not obtain any land to fulfill its objective". The deponent is also a member of Respondent No. 4 Sumangalam Co-Op. Housing Society at Bodakdev, and is allotted a plot which is under construction. These relevant aspects were required to be placed before the Court. Even AUDA is not informed till this date by Respondent No.2 Sumangal Co-Op. Housing Society that the land is not allotted to it though amount is paid by it. Respondent No.4 Sumangalam Co-Op. Society also has not conveyed to Respondent No. 2 Sumangal Co-Op. Society that it has taken possession, though the management of both the Societies, Respondents No.2 and 4, was with the same persons at the relevant time.

##. Thus, from the record it is clear that the possession was given to the Respondent No. 2 Society, registered at Gandhinagar. Yet on behalf of Respondent No.2 a wrong statement is made.

##. Our attention was drawn that in all 94 members of the Respondent No.2 Society registered at Gandhinagar in 1986 paid their share contribution [page 390-392]. 17 members whose names are reflected at page 393 paid the amount towards contribution. It appears that the amount of contribution was paid prior to 29.6.1989 and thus, it

is very clear that the Society registered at Gandhinagar, i.e. Respondent No.2 collected the amount for allotment of land from AUDA. This is also borne out from the affidavit filed by Ms. Gauri Kumar. [She has also stated that plots were allotted by the State Government to its employees in different Societies in Gandhinagar by draw of lots]. As per another list produced before the Joint Registrar of Co-Operative Societies, Gandhinagar on or about 10.10.1986 (page 634) there were 83 members of the respondent No.2 Society as on 12.12.1988. It would be relevant to note at this juncture that Varesh Sinha filed affidavit on behalf of respondent No.4 Society specifically stating that Annexure II at page 489 is a list of original promoters of the respondent No.4 Society on the date of registration of the Society as on 5.7.90 and having contributed towards the membership fees. He has attached with the affidavit a list Annexure-III indicating the original members as on 13.09.1990 whereas person at Sr. Nos. 6 to 19 were enrolled as members on 13.04.1992. Reading that list it appears that only 25 members contributed towards the land. He has annexed another list at Annexure IV at page 492 specifically mentioning that persons at Sl. No.1 to 5 were adopted as members on 13.09.1990 while persons at Sl. No.. 6 to 9 were enrolled as members on 13.4.1992. Thus, 9 members came to be inducted subsequently, who paid for these members on 30.05.1990 (to the tune of more than Rs.One crore) is not stated by Respondent No.4. As indicated earlier, most of these members were allotted plots at Gandhinagar. Knowing full well that they were provided land at concessional rate at Gandhinagar where no other citizens were provided, yet in view of allotment in favour of the Society at Gandhinagar Respondent No.2, taking advantage of similar name, another Society ultimately took over the possession of the land. It has happened only because the office bearers were also common. How could a Society which is a legal entity take possession by this method? It is also made clear by Shri Bharat Raval, Chief Executive Officer of AUDA in his affidavit dated 27.11.2000 that the possession was given on 1st June 1990, i.e. before the Respondent No.4 Society Sumangalam came into existence.

##. On behalf of AUDA, considering the dates on which the applications were made and resolutions were passed, request for reconsideration and the unambiguous version of AUDA that the land is allotted to Respondent No.2, the deponent Mr. Rawal has stated as under in paragraph 9:

"I submit that thus under these circumstances, the Hon'ry Secretary of Sumangalam Co.Op. Housing Society (Registration No. 9675/86) who had applied for the land, was handed over the possession of the land."

##. Hence, the affidavit filed by Ms. Gauri Kumar on behalf of Respondent No.2 is not true.

THE UNFAIR COLLUSION:

##. From the material placed on record it is clear that Shri C.J. Jose and Shri Jagadeesan as President and Secretary of Sumangal Co-Op. Housing Society, also represented as office bearers of Sumangalam Co-Op. Housing Society Ltd. (much before it was born) and addressed letters to AUDA. AUDA has also mentioned in its correspondence as Sumangalam Co-Op. Housing Society, but at no point of time, these officers conveyed that they have committed mistake in referring the name of the Society. Some of the members were common members in all the three Societies. The plots were allotted to the respondent No.2 Society registered at Gandhinagar. In view of similarity in name, though initially plots were allotted to the respondent No.2 Society, subsequently possession was taken over by the respondent No.4 surreptitiously. At no point of time, the respondent No.4 informed AUDA that though allotment is in favour of respondent No.2 possession is subsequently taken by respondent No.4. On behalf of AUDA, it is made clear that possession is given to the Society which made the application in 1986. It is also clear that respondent No.4 Society has made no application and in fact the amount was paid by respondent No.2 Society. From this, the only inference that can be drawn is that the respondent No.2 Society also acted illegally and permitted Respondent No. 4 to take possession of the plots illegally. This amounts to transfer of property which requires permission of AUDA. With a view to avoid the price prevailing in 1990 this method must have been adopted. That cannot be permitted. These aspects were known to Shri C.J. Jose as well as Shri Jagadeesan who are the authors of letters which we have referred to hereinabove. Before this Court, at no point of time, they have come forwarded with a case that the correspondence was on behalf of respondent No.4 Society. Shri Jagadeesan has addressed the letter in the year 1989 specifically stating that on 16.6.89 amount has been paid by Sumangalam Co-Op. Housing Society. They have not filed any affidavit before this Court clarifying the position. In view of this documentary evidence, no other

view is possible than the view that the applications were made by the respondent No.2 and allotment was in favour of the respondent No.2. Respondent No.4, Society, had acted contrary to provisions of law. It never applied for allotment and AUDA never allotted plots. Knowing very well that applications were made by respondent no.2, allotment was in favour of Respondent no.2, amount was paid by respondent no.2, possession was hand over by AUDA to respondent no.2, the Secretary who represented that he is a Secretary of Respondent No.2 Society. (That date on which he signed, he was Secretary of Society, Respondent No.2). Subsequently, changed the stand. In view of letters on record, Society, Respondent No.4, who was even not conceived on that date, took the advantage and distributed plots amongst members of Society, Respondent No.4.

##. We have carefully perused copies of various letters written in this matter for allotment of land. At page 562, 563 the name of the Society is mentioned as 'Sumangal'; At pages 567, 569, 557, 583 the name of the Society is mentioned as 'Sumangalam'. The various resolutions passed by AUDA mention the name of the Society as 'Sumangalam' at various places. Reading copy of the two receipts produced by AUDA, one reads as 'Sumangal' (pg.571-illegible) and the another reads as 'Sumangalam' (pg. 584). Thus, it appears that the name 'Sumangal' and 'Sumangalam' has been used interchangeably, and the respondent No.4 has taken disadvantage of the similarity in name to take possession of the land which was not allotted to and it never applied for such allotment of land. The respondent No.4, therefore, is a trespasser and has taken the possession without following the procedure of law and is in possession without any legal right whatsoever.

##. Though the possession of the land was given to the respondent No.2 Society, by taking advantage of similar name, respondent No.4 subsequently distributed the land amongst few persons (54 in number instead of 100 as represented earlier). It could be done only with connivance of respondent No.2. Once the land stood transferred in the name of respondent No.2 Society, either it was required to carry out the construction after plotting and allotting to its members, or if that was not possible, it was the duty of the respondent No.2 to hand over the possession back to AUDA but could not have permitted any other Society, irrespective of the fact that some of the members were common and highly interested to take possession or allot the land. If

demand was made by respondent No.4 Society, price as on that date was required to be paid, if it was decided to allot. But certainly plots allotted to one Society cannot be possessed by another Society without following the procedure of law. Transfer was not permissible as it was for the use of members of the respondent No.2 Society. To avoid payment of market rate this is done. It is also required to be noted that AUDA was persuaded to allot the land on a representation that members had no land to build tenements. By the time when AUDA allotted the lands undisputedly almost all the members were given plots at Gandhinagar by the Government at concessional rate. Therefore, if AUDA was moved by Respondent No.4, it would not have considered favourably because on that date, plots were allotted to them at Gandhinagar and thus by suppressing true facts about allotment made to respondent No.2 taking the advantage of similar name, it was represented everywhere that plots were allotted to the respondent No.4, even before the High Court in earlier proceedings.

##. Mr. Varesh Sinha, Secretary of Respondent No.4 Society, in his affidavit dated 13.11.2000, (page 27 to 37) has come out with a version that the three Societies, viz. Respondents No. 2,3, and 4 came to be registered at different times with some common members to acquire land for the members initially at Gandhinagar and later in Ahmedabad. He has stated that efforts to find the land in Gandhinagar in favour of the respondent No.2 Society did not fructify. It is required to be noted that the members were allotted plots at Gandhinagar, and, therefore, there is no point in stating that the efforts did not fructify.

##. This respondent has admitted that respondent No.2 failed in its effort to find land in Gandhinagar, made necessary application to AUDA somewhere in the month of November 1987. Thus, it was within the knowledge of the respondent No.4 that application was made by the respondent No.2 He has referred to a decision taken by AUDA on 9.12.1987 to allot land on certain terms and conditions at the price which may be fixed by the Chief Town Planner. He has also stated that in the month of April 1988, AUDA informed that the Chief Town Planner had fixed the price but has suggested that the same was not fully paid in view of the same having been found on a higher side. This is not the case of respondent No.2 Society which is represented by Ms. Gauri Kumar and at the relevant time Mr. Varesh Sinha was not the Secretary of the respondent No.4 Society as there was no existence of the respondent No.4 society at the relevant time. He

has referred to formation of respondent No.3 Society with some common members with a view to find out an appropriate land in Ahmedabad. He has stated that in the meanwhile AUDA on 21.10.1989, cancelled its decision to allot land. He has come out with the version that in view of this, members of respondent No.2 and 3 Societies started moving in the direction of forming respondent No.4 Society and at the relevant time the plots were allotted to them at Gandhinagar. This is an important aspect which should be kept in mind. The deponent has further stated that AUDA reconsidered its earlier resolution of cancellation and in view of this, respondent No.4 Society was formed. It is required to be noted that the the amount was required to be paid by the respondent No.2 Society initially and even subsequently. He has nowhere stated in his affidavit that the respondent No.4 Society submitted application to the AUDA for land or that AUDA allotted land to this Society. In the affidavit he has stated that the said members agreed to transfer the funds for the purpose of the land at Ahmedabad through the Society (proposed) and necessary debit and credit entries were made in the respective accounts. However, it is required to be noted that no documents in support of this contention is produced before us by the said deponent. Moreover, this version of the the Secretary of Respondent No.4 Society is not at all supported by Ms. Gauri Kumar, who was secretary of respondent No.2 Society. In her affidavit dated 13.11.2000 she has not even whispered about the application being made, the amount being collected from members for payment and the payment to AUDA or the entries made in the books of accounts. Thus, the say of the respondent No.4 Society which comes from Mr. Varesh Sinha cannot be accepted. Considering paragraph 12 of the affidavit of Mr. Varesh Sinha, it becomes clear that he was instrumental in moving the Government to close the chapter. The Chief Secretary in his affidavit has pointed out that on the application made by Mr. Varesh Sinha, a decision was taken.

##. Mr. Vakil, learned Counsel submitted that in the instant case, allotment was in favour of Gandhinagar Society. No books of account have been produced by the respondent No.2 Gandhinagar Society, only with a view to assist the members of the respondent No.4 Society. In the affidavit filed on behalf of the Gandhinagar Society it is stated that records are not available. However, record indicates that they have collected the amount and paid the same to AUDA. It is therefore not possible to believe that the records are not available with them.

##. On behalf of the respondent No.4 Society, in the affidavit dated 13.11.2000, it is stated that there was no collusion between the three Societies, in the matter of getting land from AUDA. This version cannot be accepted as in fact this respondent No.4 Society has not made an application and the land which was allotted to the respondent No.2 has been subsequently taken over by the respondent No.4 Society. This could not have been possible if there was no collusion between them. Thus the contention raised on behalf of the respondent No.4 Society cannot be accepted.

##. At this juncture, it is also required to be noted that it is the respondent No.2 Society having registration No. 9675 dated 10.10.1986 that made the application for allotment of land and its request was accepted. It is stated that the Town Planning Officer determined the price of the land, considering the year in which the application was made. This is nothing but a hoax since in the letter dated 24.11.1987 [page 449], the Society has already indicated that it is willing to purchase the land at the price indicated by the Chairman of AUDA. Hence, it is clear that the price has been determined by AUDA much before, and mere a show is made that the Town Planning Officer determined the same and that the price determined by the Town Planning Officer is reasonable. During the intervening period between the date of the application by the respondent No.2 Society, i.e., 16.2.1987 and the actual date of allotment of the land by AUDA, i.e., 19.1.1990 much waters have flown. The area developed and the price of land increased. Therefore, if Gandhinagar Society was not in need of the plots, and if other Societies wanted land, it was the bounden duty of AUDA to dispose of the property by holding public auction or inviting tenders. After a long interval, another Society, i.e. respondent No.4, having similar name with a view to get the land at a cheaper price which was determined long ago for respondent No.2 surreptitiously took possession of the land. It is not difficult to understand that the persons who took the possession were aware about the provisions of law, because they are high ranking officers of the Government. Mr. Vakil, learned amicus curie submitted that it is in breach of Article 14 of the Constitution as other similarly situated were never given such offers.

##. Mr. Vakil submitted that the manner of disposal of the land must be consistent with the provisions contained in Article 14 of the Constitution. According to him, other societies ought to have been invited and were required to be made aware about the land to be allotted

to a Co-Operative Housing Societies. Earlier the Division Bench has decided the matter as assurance was given by the members of the Society that they will construct only residential houses, but at the same time, it is required to be noted that the Secretary of the Society never disclosed before the Court that it was not the society which applied for allotment of land and that another Society has taken possession of the land. We have already dealt with that part in detail hereinabove and we hold that it was an act of connivance.

##. It is required to be noted at this juncture that C.J. Jose, as President of the Sumangal Co-Op. Housing Society Ltd., addressed a letter to Chairman, AUDA. We have already recorded above the statement on oath coming from AUDA that the land was allotted to the Society having registration No. 9675/86 (i.e. respondent No.2). Shri Prasad was Chairman of AUDA. Immediately on receiving letter on 16th July 1987, he has given response, which is noted on the margin of the letter. On 21.7.1987, again another letter was written by Shri C.J. Jose. AUDA also wrote a letter dated 10.12.1987 [page 566] addressed to Shri C.J. Jose as President of Sumangal Co-Op. Housing Society. We are referring the name again because there is similarity in names and from the beginning the Society is referred as Sumangalam Society, and though the birth of respondent No.4 Sumangalam Society is 5.7.1990,, even in the correspondence in 1987, the name Sumangalam is used. By the said letter dated 10.12.1987 of AUDA, it was indicated that land admeasuring 20494 sq. mtrs. of land of Final Plot No. 694, 695, 696 has been allotted as per resolution of the Land Committee held on 9.12.1987. It may be noted here that Shri Prasad was Chairman of AUDA at the relevant time. Shri C.J. Jose, on 16.6.1988 [page 567] wrote another letter on his personal letterhead typing below his name as Chairman of Sumangalam Society Ltd. In the body of the letter also, there is mention of the name Sumangalam Co-Op Housing Society. He has also written another letter dated 21.7.1988 in the similar fashion wherein he has also referred to the fact that "recently Govt. of Gujarat has decided to allot housing plots to Govt. employees in Gandhinagar at the development cost which is about 1/8 of the market value." These documents are found from pages 560 to 570 along with the affidavit filed by Shri Bharat V Raval, Chief Executive Authority of AUDA.

##. At page 572, AUDA has produced on record Minutes of 118th Meeting held on 7.10. 1989. Reading the same, it appears that there was a proposal in connection with the

land allotted to Sumangalam Co-Op Housing Society. It appears that the discussion which took place is also noted in the said resolution. A decision was taken that neighbourhood center cannot be given for the purpose of residence as per the opinion of the Chief Town Planning Officer and the members of the Board. It also refers that the land was meant for public housing as well as for neighbourhood centre, and, therefore, the allotment made in favour of Sumangalam Co-Op. Housing Society is cancelled and 5% amount paid by the Society should be refunded. If on 7.10.1989 a decision was taken to cancel the allotment and return the amount to the Sumangalam Co-Op. Society, what compelled the subsequent Board to change the decision. In this letter also, we find the name of Sumangalam Co-Op. Housing Society. A letter is also addressed to the Chairman Shri C.J. Jose, Chairman of Sumangalam Society.

##. On 21.12.1989 [page 557], a letter is addressed by the Sumangalam Co-Op. Society, specifically mentioning the registration No. 9675/86 to AUDA making a representation that the price in any case cannot exceed Rs.365/-, and the price fixed at Rs.600/- to Rs.700/- is unjust. It is also stated that there is encroachment. He has also stated that on 16.6.1989, amount has been paid to AUDA for these lands and they - to be specific respondent No.2 Society having registration No. 9675/86 are claiming their right on the land. By this letter, Secretary of the Society Shri Jagadeesan requested to reconsider the matter. Soon thereafter, a decision was taken in favour of the Sumangalam Co-Op. Society.

##. In January 1990, [page 581] as referred earlier, letter was written by AUDA to the Secretary of the Sumangalam Co-Op. Housing Society about the amount to be paid and neighbourhood centre stating specifically that no permission will be granted to use the land till the Government grants permission for the change. On 30.5.1990, Secretary of Sumangalam Co-Op. Society addressed a letter to the Chief Secretary, AUDA and a sum of Rs.1,03,85,000/- was paid to AUDA by cheque. In the body of the letter also, there is a reference to the name of Sumangalam Co-Op. Society. Receipt No. 44414 dated 30.5.1990 is also issued by AUDA in favour of the Sumangalam Co-Op. Housing Society. These documents are found from page 572 to 584 of the paper book. From the above, it clearly appears that the societies have acted in collusion.

##. It is clear that the persons represented before AUDA that they were members of the respondent No.2 Society and

it was not made clear that they are members of other Society, viz. respondent No.4. Respondent No.4 never submitted application for allotment of plots and neither AUDA passed any resolution for allotment of plots to Resp. No.4 nor allotted any plot to Respondent No.4. It is these defaulting officers who approached the AUDA and took the advantage of similarity in name. Today, now because they are the signatories in whose favour the documents have been executed, they cannot claim equity in their favour. They are the defaulting parties.

LEGALITY OF DOCUMENTS EXECUTED BY INEXISTENT SOCIETY:

##. At the cost of repetition, we are required to state that there is voluminous record to show that the Society at Gandhinagar (Resp. No.2) only entered into correspondence with AUDA and not the respondent No.4 Society at Ahmedabad. On 1.6.1990, possession was handed over to the Society which was in existence at the relevant time, viz. Resp. No.2.. The respondent No.4 Society was not in existence on that date. It is clear that it was registered on 5.7.90 only. Thus when the possession was taken, since the respondent No.4 Society was not in existence, it could not have taken possession. We have already quoted earlier above the statement made by AUDA in its affidavit that AUDA gave possession of the land to the Society which applied for the land i.e. respondent No.2. The act of handing over took place when S. Jagadeesan was the Secretary of Respondent No.2 He cannot thereafter say that the possession was taken on behalf of the respondent No.4 which was not in existence. Thus, both respondents No.2 and 4 have acted illegally.

##. Turning to the Ahmedabad Urban Development Authority [Disposal of Land & Other Properties] Regulations, 1984, with regard to the disposal, it is clear that it can allot the land in favour of a Co-Op. Housing Society, i.e. the Society in existence, and not the Society in pipeline.

##. Mr. Vakil, learned counsel drew our attention to the judgment of the Division Bench of this Court in the case of RAMJI MANDIR vs. NARSINH NAGAR reported in 1979 GLR 801. It was contended on behalf of the Society as well as some plot holders that the Society was in contemplation, and, therefore, no illegality is committed. In view of section 37 of Gujarat Co-Operative Societies Act, it is clear that Co-Operative Society becomes a legal person after its registration and it is after this registration that it acquires a capacity to

enter into contracts. The language used in Rule 3 cannot be interpreted so as to enlarge the scope of sec. 37. Rule 3 does not expressly say that proposed Society can enter into a contract, No such indirect inference from the rule can be drawn for the purpose of enlarging the scope of the principles embodied in sec. 37. The Court in the aforesaid judgment explicitly held that a Society, before it is registered and comes into existence, cannot act. The Court also held that the agreement of lese entered into between the Trust on one hand and a nonexistent Society on the other hand, is a nullity. The Court further held that such an agrement cannot be enforced against a non-existent Society. In view of the settled legal position, it is clear that the respondent No.4 Society had no right whatsoever.

##. Mr. Vakil invited our attention to the judgment in the case of C.I.T. VS. CITY MILLS DISTRIBUTORS (P) LTD. reported in (1996) 2 SCC 375. The question involved in the matter was the legal entity that had carried on the business before the assessee-company was incorporated. In paragraph 8, the Apex Court held as under:

> "A Company becomes a legal entity in the eye of law only when it is incorporated. Prior to its incorporate, it simply does not exist. The assessee-Company did not exist when the income with which we are here concerned was earned."

##. It is equally important to note at this stage that the AUDA knew that plot No. 695 is reserved for neighbourhood centre. It was clearly mentioned that no development permission will be granted unless and until the government grants permission for variation [page 582]. From the conduct, it appears that these officers were sure that the State Government will vary the TP Scheme otherwise they would not have invested the amount. To our surprise, without providing an alternative site for neighbourhood centre, the State Government, after period of 10 years, has approved the variation. This speaks a lot about the Government and the AUDA. On one hand, they are stating that with a view to provide facilities to the people, they shall provide various centres such as neighbourhood centre, shopping centre, markets, garden etc. In this area, no market is provided; there is no public shopping centre, no neighbourhood centre is provided by the State or AUDA. The question is: can it be done, so as to benefit only a class of people without keeping in mind the benefit which otherwise people at large would have been entitled to.

VIOLATION OF LAND CEILING ACT:

##. The land was obtained by representing to AUDA that the Respondent No.2 Society had about 100 members, (in fact had 77 members). But in fact plots admeasuring 20494 sq.mtrs. has been shared / divided / distributed amongst 54 persons only who are the members of the Respondent No.4 Society as on date. Thus, it is clear that the land has been divided amongst few persons in contravention of the Urban Land (Ceiling & Regulation) Act [hereinafter referred to as the `ULC Act']. It is also required to be noted that one of the member who was active in the Government put up a note that Form No.6 under the Urban Land (Ceiling & Regulation) Act need not be filed though it was insisted by the Government.

##. It is required to be noted that the Respondent No. 4 Society made an application to the authority under the provisions contained in the ULC Act and that application was granted. The state government in view of the directions given by the Union Of India has issued a circular, which is dated 30th March 1984. Certain conditions are mentioned in the said circular and accordingly Co-Op. Society shall not transfer the plot or land to any other person or Co-Op. Society. Further, a Co-Op. Society can allot land upto 200 sq. meters to its member and the person to whom such land is allotted shall not transfer the land to anyone within a period of ten years. Mr. Shelat, learned Additional Advocate General submitted that once the application is made and is granted, then it is not open for the Society to state that the Society can act contrary to the conditions on which such application is granted. Mr. Kamal Trivedi appearing for the Respondent No. 4 Society submitted that the aforesaid circular does not apply in view of section 19 of the ULC Act.

##. The State Government while granting permission under Section 20 of the ULC Act issued circular dated 30/03/1984 [page 605 to 608] whereby cooperative societies were exempted from the provisions of the Act. Reading the circular, it is very clear that initially societies, which were registered prior to 07/02/1976 were covered under the circular. However, thereafter by keeping the said conditions intact, the benefits were extended to the societies registered under the Cooperative Societies Act by a letter dated 02/05/1980, which were applicable to the societies registered prior to 31/12. By circular dated 30/03/1984, decision was conveyed to the societies which were registered and were

seeking exemption under Section 20 of the Urban Land [Ceiling & Regulations] Act, that the Government will consider the same as per the conditions enumerated in the Central Government letter dated 02/05/1980. As per condition no.3, person was entitled to get the land admeasuring about 200 sq.mtrs. only. The society and members will have to make construction as per master plan framed under the building regulations and construction will have to be completed within a period of three years. It was also further conditioned that the land shall be used for the purpose of residence only.

##. It is required to be noted that the provisions contained in section 19 of the ULC Act as stood at the relevant time, would apply in the facts of this case. Opening part of sub-section reads as under:

"19.(1). Chapter not to apply to certain vacant lands - (1). Subject to the provisions of sub-section (2), nothing in this Chapter shall apply to any vacant land held by:-

(i) to (iv). xxx xxx xxx xxx

(v). any co-operative society, being a land mortgage bank or a housing co-operative society, registered or deemed to be registered under any law relating to co-operative societies for the time being in force

xxx xxx xxx xxx xx

(vii) any Society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other corresponding law for the time being in force and used for any non-profit and non-commercial purposes.

##. Thus, reading the aforesaid provisions, it is made clear that when the Act came into force, if the Society held land, then the section is required to be read as it is, but if the Society was not in existence, there is no question of holding any vacant land on the date on which the Act came into force. It was however, emphasised that the Society being Co-Operative Society to be more precise a Housing Co-Operative Society -, the provisions will not apply. It is required to be noted that the operative

part refers "any vacant land held by" meaning thereby, the date on which the Act came into force, the Co-Operative Society held the vacant land. So far as sub-clause 7 is concerned, it refers to the Society registered under the Societies Registration Act, 1860 or under any corresponding law for the time being in force and it further specifies that even such Societies must hold the vacant land used for any non-profit or non-commercial purposes.

##. For applicability of Section 19 of ULC Act, it must be shown that the date on which the act came in force society was already registered and the society on that day was the owner of the land in excess then the limit and was in possession of such land. If society was not possessing the land as the owner on the day when Act came into force, there is no question of society getting exemption. By Ministry's letter No. 9/48/78 UCU dated 2nd may, 1980, Government indicated that it had no objection in granting exemption under Section 20 of the ULC Act if the housing society was in existence and registered under the law relating to registration of such societies before the commencement of the Act namely 17th February, 1976.

##. A large number of housing cooperative societies registered after commencement of the Act having desired to buy excess vacant land were facing hardships. Genuine cooperative Housing Societies were facing problems. Considering various aspects and particularly, genuine cooperative Housing societies, condition was imposed and earlier letter was amended in view of letter-circular No.9/48/78-UCU dtd. 7.10.83 and instead of existing societies on the date when Act came into force, for exemption under Section 20 of ULC Act, the requirement was as under:-

> "the housing society should have been in existence and registered under the law relating to the registration of such societies for at least two years before the transfer of the land in question."

##. The guidelines contained in the letters of Government of India are directions issued under Section 36 of the ULC Act, a central enactment. It was obligatory on the part of State Government to comply with the directions of the Central Government under Articles 256 and 257 of the Constitution.

##. The object of the Act was to prevent concentration

of urban land in the hands of few persons and speculation and profiteering therein and to bring about equitable distribution of the land in urban agglomeration to subserve common good, the exercise of power under Section 20(1) by the State Government to grant exemption in favour of a house building cooperative society serves common good as it promotes both economic development and social improvements.

##. Thus, it is in view of providing housing facilities (of course residential) exemption was to be granted to the societies registered at least before 2 years before the transfer of land and that exemption was with certain conditions.

##. The State Government on 21.7.1992 in exercise of powers under Section 20 of ULC Act made an order, the copy of which is produced on record by Chief Manager, Visnagar Nagrik Sahakari Bank and the original was produced for perusal before the Court. One document styled as lease deed is on record at page 38. There is a specific reference in the lease deed executed by and between AUDA and Society that the land described in the agreement is exempted by the State Government under Section 20(1) of the ULC Act, 1976 under its order No. ULC-2092-218, dated 21/07/1992 [see page 40]. Lease deed is signed by S. Jagadeesan, as Secretary of Society and N.K.Patel, Officer of AUDA on 3rd February 1995 whereas in documents from pages 71 to 97, [two documents] there is no reference. Thus, reading the documents, the day i.e., 1/06/1990, on which possession is claimed to have been taken is in contravention of the provisions of law. The land is in possession in view of the exemption subsequently granted and in breach of the provisions, the land is used. Thus, in view of the order granting exemption and filling the form, the society was required to sub-plot not exceeding 200 meters and to complete the construction within the time stipulated. Respondent No.4 did not complete 2 years and used the name of Gandhinagar Society and filled the form. In violation of conditions, plots exceeding 200 meters were distributed and the buildings are not erected as per regulation and for their residence. Thus, the members and the society have acted contrary to law.

##. As the Society was not in existence and was formed subsequently, the circular issued by the Central Government which is produced on record at page 605 is required to be read with the provisions referred to hereinabove, and in view of this circular it must be held that the circular is in conformity with the provisions

contained in the Act, and was issued with a view to give benefit to the people at large. It is clear from the circular that a person can have only 200 sq. mtrs. of land and that too, he must not have any house or his family members should not have any house. It further provides that the Society shall carry out construction as per the building regulations or master plan, and that too within three years, it will be completed, and the land shall be used for the purpose of residence only. Learned counsel Mr. S.B. Vakil, Mr. S.N.Shelat, learned advocate General, as well as learned counsel on behalf of AUDA pointed out that there is complete breach of these provisions, and contrary to the provisions contained in the law, land has been distributed and used. Respondent No.4, which was not a society registered before two years from the date of transfer, was not entitled to get exemption. For this purpose, the date is not filled in the letter.

##. In the instant case, the officers prior to getting possession of the plots, were also allotted plots at Gandhinagar, and, therefore, even under the name of a different Society even if land is obtained, it is in breach of the provisions contained in the law. In view of the provisions referred to hereinabove, the application was made by the Society. The learned Advocate General submitted that it is not fair on the part of the Secretary of the Respondent No.4 to state that it was under misconception or that the provisions are not applicable. Circular points out that if the State Government is satisfied that the land is acquired by misrepresentation or fraud, then the State Government shall withdraw the concession or exemption and even though the building is erected, the land shall be deemed to be vacant land. Government officers were required to carry out the circular and it was for them to see that there was no breach of this circular but it is very unfortunate that in the instant case, the persons who were required to see that the circular is implemented, have not taken care of the said circular.

PROCURING LAND TWICE AT CONCESSIONAL RATES:

##. The Government of Gujarat allotted plots for residential buildings to its employees at Gandhinagar. It is surprising to note that out of 54 members of the respondent No. 4 Society, 42 persons are allotted plots at Gandhinagar also as stated by Additional Advocate General. It may be noted that at Gandhinagar they were not required to pay `market price' but the price as determined by the Government at concessional rate.

##. It is clear from the record placed before us by the State Government that the persons who were entitled to get the plots at Gandhinagar made applications. It is clear that the persons have made applications on or about 16.12.1988 and the allotment is made on different dates, but most of them were allotted in 1989 and 1990. As per the resolution, the plots are allotted at concessional rate, and without auction.

##. It is also required to be noted that Jayshree Dewamgam, Resident Deputy Collector filed an affidavit [page 626 to 629] pointing out that the Society registered at Gandhinagar, viz, respondent No.2 applied on 5th July 1988 for allotment of land to its 67 members and according to the Government resolution of R & B Department dated 29.7.1988 request was made for allotment of 100 plots of 200 sq. mtrs [page 630]. This letter is signed by Gauri Kumar, I.A.S, as Hon'ry Secretary of the Society. A copy of this letter is also forwarded to C.J. Jose, Managing Director, Gujarat Tractors Limited. Thus these officers knew very well that they have made application for allotment of plots at Gandhinagar in the year 1988. It is also required to be noted that before the plots were allotted at Ahmedabad, they were offered / allotted plots at Gandhinagar. The manner in which the plots were obtained has been discussed by us earlier. At this stage, we would like to clarify that on 17.8.1988, 27.12.1988 and 31.12.1988 separate letters were written along with annexures stating they have completed 5 years service in the State Government and are in permanent service. Neither the Government Officer nor spouse nor any dependant has any plot or residential accommodation. The applications were given in the name of Karmayog Co-Op. Housing Society registered at Gandhinagar. The names are at pages 641 to 648. The names of the persons who applied in the name of respondent No.2 Society by letter dated 5.7.88 are at page 631, 634 to 639. Thus, it is clear that 42 out of 54 persons who were allotted plots by respondent No.4 Society were also allotted plots at Gandhinagar.

##. Over and above this, there is correspondence by Shri L.N.S Mukundan dated 21st February 1990. He addressed a letter in the capacity as the Managing Director, National Textiles Corporation, having its office at Bangalore. He made it clear that he belonged to Gujarat cadre and was on deputation at Bangalore and applied for allotment of plot admeasuring 330 sq. mtrs. He has disclosed his address at Bangalore. There is an affidavit filed by him, copy of which is placed on record at page 652.

##. It is required to be noted that Shri A Prasad addressed a letter dated 15.3.1990 asking the Collector Gandhinagar to allot a plot admeasuring 330 sq. mtrs, copy of which is placed on record at page 654. Another officer, Mr. Mahapatra also forwarded his application, a copy of which is placed at page 655 with affidavit at page 656. At the relevant time he was on deputation to Government of India, Ministry of Textile.

PRESENT STATUS :

##. On the basis of the affidavits & statements filed by AUDA, Resident Deputy Collector, Gandhinagar and the affidavits & documents produced on record by the other respondents, who are the allottees of the plots, the present status of the plots allotted at Respondent No.4 Society and at Gandhinagar, can be summarized as under in a comparative statement form.

Name of member Present Subplot/Area status at Resp.4	Whether plot allotted at Gandhinagar Present status
Final Plot No.694 C.J.Jose SOLD FSI for basement 01/344.72 & G.F. to Visnagar Co. Op. Bank Basement : Safe Deposit Vault G.F. - Bank Hall F.F. - Gifted Dev. rights to Manisha Yes & Mast. John Jose Running Computer Training Inst. S.F. - Gifted Dev. rights to Mrs. Janet Jose - Residence	
Smt Gauri Kumar Under Construction 02/319.5 Approval Granted No for Store in Base- ment & Residence in G.F to T.F	
I.P. Gautam Approval Granted for 03/312.12 Basement - Safe Deposit Vault, G.F. - Bank Hall No F.F. - Hall	

S.F.&T.F.-Resi.
Basement to F.F. -
Non-Use
S.F.&T.F.-Resi.

D.J. Pandian Approval Granted for
04/320.41 Basement - Store Yes
G.F.toT.F. - Resi.
Construction not
Commenced

C.I. Joy Open Plot No
05/312.83

M. Sahu Amalgamated Plot
06/340.71 with Sub-Plot No.7
allotted to S.Jagadeesan
Approval Granted Yes
Basement - Safe, Self Residence
G.F.-Bank, F.F. to
T.F. - Residence
Basement - Safe Deposit
Vault, G.F. - Bank,
F.F.-Office, S.F. - Open

S. Jagadeesan Amalgamated Plot
07/343.55 with Sub-Plot No.6
allotted to M.Sahu
Approval Granted Yes
Basement - Safe, Rented out
G.F.-Bank, F.F. to
T.F. - Residence
Basement - Safe Deposit
Vault, G.F. - Bank,
F.F.-Office, S.F. - Open

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Final Plot No.695

B.K. Jha SOLD to
01/276.75 Independent Yes
Owner's Association.
[at Rs. 19 Lacs]
At Present : Basement-
Kitchen & Store,
G.F. - Restaurant & Shop
F.F. - Restaurant & Office
S.F. & T.F. - Office

S.N. Sinha
02/291.18 SOLD to Shaastra Yes
Owners Association Other person

[NTC]	resides		
P.K. Gosh 03/284.75	No details furnished As per AUDA & Society Open Plot	Yes	Rented out
Vijay Ranchan 04/271.5	Open Plot	Yes	Rented out
Tapan Ray 05/279.2	No details furnished As per AUDA & Society Open Plot	No	
P.K. Valera 06/261.89	Open Plot	Yes	
V.P. Kamdar 07/257.04	Open Plot	No	
V.B. Patel 08/410.41	Open Plot	No	
H.M. Shah 09/282.91	SOLD to Kala- Ratna Hsg. Pvt. Ltd. Use on Site : Flat	Yes	
SS Khandwala 10/273.95	Open Plot	Yes	Rented out
GC Raigar 11/298.65	Approval Granted for upto T.F. - Resi. Under Construction	Yes	Rented out
PK Taneja 12/254.37	SOLD	Yes	
PK Pujari 13/295.67	No details furnished As per AUDA & Society Open Plot	No	
L. Mansingh 14/290.23	Amalgamated with S. Plot No.15 allotted to O.Ravi. Rented out SOLD the plot to Kala- Ratna Builders. Use On Site : Flat	Yes	

O. Ravi
15/290.25 Amalgamated with
S.Plot No.14 allotted
to L.Mansingh Yes
Sold

SOLD the plot to Kala-
Ratna Builders.
Use On Site : Flat

BS Nirula Open Plot Yes
16/293.5 Self Residence

HK Khan SOLD to Swamini Yes
17/337.5 Owners' Association Rented out

KV Harihardas Transferred under Yes
18/354.01 Agreement to sell Sold

PN Roychowdhry Open Plot Yes
19/280.86 Rented out

NL Kalma Open Plot Yes
20/280.86 Bldg. is closed

RD Tamhane SOLD Yes
21/280.86 Self residence

Hiralal Open Plot Yes
22/280.86 Rented out

RC Mehta Open Plot Self
23/280.86 residence

KV Joseph Open Plot Yes
24/280.86 Rented out

A Prasad Approval Granted for Yes
25/329.02 Basement - Nursing Self Residence
Equipment Store,
G.F. - Nursing Home
F.F.&S.F. - Residence
Use On Site:
Basement - Non Use
G.F.- Shops
F.F.&S.F. - Non Use

KS Varma No details furnished Yes
26/303.5 As per AUDA & Society Rented out
Open Plot

JA Chowdhry No details furnished Yes
27/299.62 As per AUDA & Society
Open Plot

KV Bhanujan Open Plot Yes
28/343.17 Self Residence

Kundanlal No details furnished Yes
29/311.18 As per AUDA & Society Daughter Residing
Open Plot

MM Srivastav SOLD Yes
30/277.35 Vacant

KC Mohapatra Open Plot Yes
31/264.01 Self Residence

Pramod Kumar Open Plot No
42/304.42

Final Plot No.696
LNS Mukundan No details furnished Yes
01/364.00 As per AUDA & Society
Open Plot

SK Mohapatra Amalgamated with S.Plot
02/255.08 No.3 allotted to R.K. Yes
Tripathy Rented out
SOLD
Use on site : Flats

RK Tripathy
03/325.67 Amalgamated with S.Plot
No.2 allotted to S.K. No
Mohapatra

SOLD
Use on site : Flats
RK Tripathy is occupying
One Flat

R. Sibbal Open Plot Yes
04/285.18 Self Residence

Maniram Open Plot Yes
05/285.18 Self Residence

Ilaben N Mansetta 06/285.18	No details furnished As per AUDA & Society Open Plot		No
Williams 07/285.18	No details furnished As per AUDA & Society Open Plot		No
Kumar Swamy 08/297.94	Open Plot	Rented out	Yes
Shivlal 09/310.00	SOLD	Sold	Yes
KS Chaturvedi 10/304.92	SOLD		No
PP Paneerval 11/300.6	Open Plot	Rented out	Yes
AK Pradahan 12/300.6	Open Plot	Rented out	Yes
AM Tiwari 13/300.6	No details furnished As per AUDA & Society Open Plot		No
PK Gera 14/300.6	No details furnished As per AUDA & Society Open Plot		Yes
Varesh Sinha 15/314.00	Approval Granted for Basement - Store G.F. to S.F. - Resi. Use on Site: Yes Basement + G.F.(Part) - Shops; G.F.(Part) - School, F.F. - Resi. S.F. - Office, T.F. - Residence	Rented out	Yes

From the aforesaid statement, the following facts emerge :

(a) C.J.Jose, B.K.Jha, S.N.Sinha, H.M.Shah, P.K.Taneja, L.Mansingh, O.Ravi, H.K.Khan, R.D.Tamhane, M.M.Srivastav, S.K.Mohapatra, R.K.Tripathy, Shivlal, K.S.Chaturvedi, K.V.Harihardas have sold the plots. [15 persons]

(b) The plots of C.I.Joy, Vijay Ranchan, P.K.Valera, D.J.Pandian, V.P.Kamdar, V.B.Patel, S.S.Khandwala, B.S.Nirula, P.N.Roy Chowdhary, N.L.Kalma, Hiralal, R.C.Mehta, K.V.Joseph, K.V.Bhanujan, K.C.Mohapatra, Pramod Kumar, R.Sibbal, Maniram, Kumarswamy, P.P.Paneervel, A.K.Pradhan are open. [21 persons]

(c) The present status regarding plots of P.K.Ghosh, Tapan Ray, P.K.Pujari, K.S.Verma, J.A.Chowdhary, Kundanlal, LNS. Mukundan, Ilaben N. Mansetta, Williams, A.M.Tiwari, P.K.Ghera are not available. [As per AUDA & Society Plots are open. (11 persons)].

(d) The plots of Smt. Gauri Kumar & G.C.Raigar are under construction. [2 persons]

(e) On the plots of I.P.Gautam, M.Shahu, S.Jagadeesan, A.Prasad, Varesh Sinha construction work is over. [(5 persons) But except I.P.Gautam non is occupying the constructed property]

FRAUD WITH THE COURT :

##. In the earlier proceedings, viz: Spl.C.A. Nos. 3082/91 and 3781/91 it was the clear-cut case that they require the land for the purpose of residence only. We have quoted earlier paragraph 4.2 from the affidavit of Mr. S. Jagadeesan in Spl. C.A. No.3082/91 and in unambiguous terms, the Court was conveyed that the land was required for housing purpose by top ranking IAS/IPS officers. Moreover, the earlier Division Bench was persuaded to believe that the respondent No.4 was requesting for land since 1987. Shri Jagadeesan even did not inform the Court in his affidavit that at Gandhinagar, the plots were allotted at a concessional rate. Had it been pointed out to the Court that the land is to be utilised for commercial purpose, the Court would have taken a different view. We say so because the Court, (Coram: G.N. Ray, C.J. & C.K. Thakkar, J.) in paragraph 13 of the order, has observed as under:

"13. We are also not impressed by the contention that there is change of use or purpose as contended by the petitioners. It is submitted that the land is reserved for Public Housing and District Neighbourhood, and, therefore, no commercial use of the land is permissible.

However, looking to the evidence on record, there is nothing to show that the land will be used for commercial purpose or construction of Super Market."

##. Thus, the Court accepted the say that allotment was for the purpose of residential houses for the members of the Society only and it will not be used for commercial purpose or construction of supermarket. The assurance given to the Court is found to have been breached by these officers.

##. In the earlier petitions filed before this Court, as stated above, the Court was assured that the residential houses will be constructed for their residential purposes only. Relying upon such an affidavit coming forth from a top ranking IAS officer, the Court rejected even the contention of nexus with builders to construct flats on these plots. It thus appears that after having obtained the order from the Court, the land was put to commercial use and not for residence of its members. Earlier, the Court considering the aspect that the land will be used for residential purposes only, did not interfere.

##. In the earlier petitions, the fact of existence of three Societies was never placed before the Court by the deponent on behalf of the Respondent No. 4 Society though these facts were within the knowledge of the deponent. It was never disclosed to the Court that most of the members were given land at Gandhinagar at concessional price earlier, i.e. in 1990. The Government allotted land at Gandhinagar to these officers at concessional rate for construction of residential accommodation, while other citizens were not given plot at Gandhinagar at the same rate at which the officers were allotted. Thus, by suppressing the existence of three societies, the plots obtained at Gandhinagar and that the land was never allotted to the Society at Bodakdev, (present respondent No.4) the Court was persuaded to deliver the judgment in these two matters. By suppressing relevant and material facts which were within the knowledge of deponent on behalf of Society (now respondent No.4) order was obtained from the Court.

##. Relevant extracts from paragraphs 5 and 6 of the judgment are as under:-

"5. It is the case of the petitioners that in the Final Town Planning Scheme, plot Nos. 694 and 695 are reserved for public Housing while plot No. 696 is reserved for District

Neighbourhood.

"Before disposal of the land in question in favour of the Society, no tenders were invited, offers were called for nor public auction was made and for that reason also, the impugned action requires to be quashed."

" .... the action was clearly malafide and in colourable exercise of the power on the part of the authorities. It is also contended that the impugned action of granting land in favour of the cooperative society was violative of the principles of natural justice inasmuch as one Mr. A. Prasad was the Chairman of the Ahmedabad Urban Development Authority (AUDA) who was also a member of the Co-operative society."

"6. An affidavit-in-reply is filed by AUDA inter alia denying the allegation levelled against it as well as against the office bearers. .... It is absolutely incorrect to allege that the property in question is sold to the respondent society. it is only let out to the Society for period of 99 years. It is submitted that after following proper procedure in accordance with law, AUDA allotted plots in question to Sumangalam Cooperative Housing Society and AUDA has power to do so, and, therefore, the impugned action is neither illegal nor arbitrary, nor malafide. ..... In fact, after following proper procedure and considering the facts and circumstances, it was let out to the respondent-society pursuant to the application made by the society."

##. Reading the above, it is clear that the land was not transferred by sale to the Society, but it was given on lease for a period of 90 years. Thus, it is not a free hold land. It is further stated in the affidavit of AUDA that "after following proper procedure in accordance with law, AUDA allotted plots in question to Sumangalam Cooperative Housing Society". It is required to be noted that in the order made by the Court, it is specially mentioned that application was submitted by the Society on November 24, 1987, decision was taken by AUDA on 9-12-1987, the decision was communicated on 10.12.1987, the Town Planning Officer fixed the price on 22.4.1988. In view of the fact that the respondent No.4 Society came into existence only on 5.7.1990, this Society could not have made an application in 1987 or could not have

entered into any correspondence. Thus, there is total suppression of the material facts from the Court, and what is more is that the respondent No.4 made representations before the Court as if it is Respondent No.4 Society which applied for the land and the land was allotted to it. The Court was never informed about the existence of the respondent No.2 Society or the New Sumangalam Co-Op Society, respondent No.3. It was suppressed from the Court that the respondent No.2 made the application. It was suppressed from the Court that the land was allotted to the respondent No.2 Society. It was suppressed from the Court that the respondent No.2 made the payment. On the contrary, the tenor of the submissions before the Court at the relevant time in the aforesaid matters was that the applications were made by the respondent No.4 Society, payments were made by the respondent No.4 Society and the land was allotted to the respondent No.4 Society. In view of the aforesaid facts, we have absolutely no hesitation in holding that the Court had been mislead so as to obtain an order in their favour in Spl. C.A. Nos. 3082/1991 and 3781/1991.

##. Mr. S.Jagadeesan in paragraph 5.1 of his affidavit filed in the aforesaid proceedings stated as under:

"5.1 The respondent society is a legally and validly constituted society duly registered under the provisions of the Gujarat Cooperative Societies Act. The respondent society came into force somewhere in the year 1986." (emphasis supplied by us)

In paragraph 5.2, Mr. Jagadeesan further stated as under:

"5.2 The respondent society was basically formed with a view to providing for some permanent houses arrangement for the government servants who are the members of the respondent society so that in a form of society they can effectively negotiate with all concerned authorities. For this purpose, the respondent society started corresponding with the respondent no.1 authority right from year 1987 for the allotment of a suitable land where it can get constructed residential premises for its members. By way of specimen, I annex hereto a copy of letter dated 24.11.1987 addressed by the then Chairman, Shri C.J.Jose to the Chairman of the respondent no.1 authority at that time and mark the same as Annexure-II. This was followed by a series of correspondence between the respondent

no.1 authority and the respondent society and ultimately, the respondent no.1 authority vide its letter dated 10.12.1987 informed the respondent society by stating inter alia that final plots nos. 694, 695 and 696 admeasuring 20,494 sq.mtrs. of land could be allotted to the respondent society at the rates which may be fixed by Chief Town Planner. For ready reference, a copy of the said letter dated 10.12.1987 is annexed hereto and marked as Anneuxre-III. "

##. Mr. Jagadeesan in his affidavit has referred to correspondence with AUDA from inception. He has also indicated that the society was informed to make the payment by two installments. He has also stated in his affidavit that the society made payment of Rs.1,03,85,000/- on 30.05.1990 which was acknowledged by AUDA. Thus, before the Division Bench, it was represented that it is this society to which the plots were allotted. At this juncture, it must be noted that the letter dated 21.12.1989 requesting for reconsideration of cancellation of the allotment clearly mentioning the Registration Number of the respondent no.2 society has been kept back from the Court in that proceedings to mislead the Court.

##. Thus before the Court earlier, the representation made was that the Respondent No. 4 Society applied for grant of land for residential use, and AUDA in its meeting dated Dec. 9, 1987 granted permission and subsequently a letter was written on 10.12.1987. In the same paragraph of the judgment, we find that there is a reference to the correspondence. The order states that on April 27, 1988, AUDA addressed a letter to the Society regarding grant of the land and it was stated that Chief Town Planner had fixed the price of the land, vide its letter dated 22.4.1988. There is also a reference that the Respondent Society addressed a letter on June 16, 1988 to reduce the price. There is further reference in the judgment that an amount of Rs.6,65,000/- was paid by the Society on June 16, 1988. There is further reference at page 11 about the correspondence. There is also reference that a resolution was passed in 1987 granting land in favour of the respondent Society was cancelled. Even thereafter, there was correspondence. There is also reference that on the basis of the aforesaid resolution and action on behalf of the respondent Society also, AUDA vide its 119th meeting passed a resolution granting land in favour of the respondent Society. It was also represented before that Division Bench that it is very

clear from the record that pursuant to the above resolution AUDA informed the respondent Society by letter dated 1.3.1990 to pay Rs.1,36,84,950/- and the said amount was paid by the respondent Society on May 30, 1990. Possession of the land was given to the Society on June 1, 1990. Thus, it is very clear that before the Division Bench, a representation was made by the Society that it entered into correspondence; it paid the amount in response to letter dated 1st March 1990. The amount was paid on May 30, 1990 and possession was given on June 1, 1990. Thus, before the Division Bench, while hearing the matters, the officers suppressed material fact as to who actually made the payment. The correspondence, resolutions etc. indicate that it was in favour of the respondent No.2 Society registered at Gandhinagar. Had the Court been informed by the officers that it is a different society which is in possession of the land, the Court would not have passed the order. This amounts to nothing but fraud on the court.

##. The Court has observed in paragraph 12 of the judgment in the aforesaid matters as under:

> "In fact, the documentary evidence clearly disclosed that the land has been allotted to Sumangalam Cooperative Housing Society on lease-hold basis for period of 99 (sic; 90) years for residential purpose and not for any commercial use."
>
> [emphasis supplied]

##. Hence it was specifically the case before the Court that the land will be used only for residential purpose, and not for any commercial use or for the benefit of others.

##. In paragraph - 13 of the Judgement of the earlier Division Bench while disposing the aforesaid of Special Civil Applications considered the submissions with regard to change of use or purpose. The Court pointed out that looking to the evidence on record, there is nothing to show that the land will be used for commercial use or for construction of super market. The Court was also of the view that the land is allotted for residential accommodation to a Cooperative Society and, therefore, use in question cannot be said to be "complete or substantial change". In fact, assurance was given that it will be used for the purpose of residence and residence only. However, the Court was not informed about the fact that the society which had filed the

affidavit was different than the society in whose favour allotment order was issued by AUDA. The use of the land is found other than the residence. The Court opined that the price fixed by the officers under the Act in 1987 cannot be said to be an arbitrary or unreasonable. It is required to be taken into consideration that the price was fixed in the year 1987 for the society other than the society which allotted the plots by misusing the name. In fact, the respondents misled the Court by making a show that in their favour, there was allotment and the price was fixed in the year 1987. In fact, the society which took the possession of the land was not in existence in the year 1987. It was bounden duty of the society to put correct material before the Court. Having suppressed material facts, the order has been obtained, that goes to the root of the matter. The Division Bench in the aforesaid matter, pointed out that so far as the personal malice (malice in fact) is concerned, Mr. A.Prasad is not made a party to the petition. As held by the Apex Court in the case of State of Bihar vs. P.P.Sharma reported in A.I.R. 1991 SC P. 1260, the Court expressed the opinion that a person against whom personal allegations are made, must be impleaded as a party to the proceedings. The learned Counsel appearing before the Court made statement that they are not pressing personal malice against Mr. A.Prasad and confined their arguments on the basis of legal mala fide. It was pointed out that Mr. A. Prasad was one of the members of the society, which had made an application to AUDA for the purpose of grant of land to its members. Since he was the Chairman of AUDA appointed by the State Government under the Act, no objection could be raised against his presence at the meeting. The Court observed that he was exercising statutory powers under the Act. It was an admitted fact that earlier Resolution No. 59 dated 09/12/1987 was cancelled in AUDA's 118th Board Meeting held on 07.10.1989 by resolution no. 50 (89-90) AUDA resolved to refund the amount deposited. AUDA passed a Resolution in 119th Board Meeting dated 19/01/1990 for allotment and at that time, Mr. A.Prasad was not the Chairman of AUDA.

##. Allegations were made in the earlier petitions that for profiteering land is allotted in the name of the Society. Sum and substance was that these officers were not going to construct tenements for their own residence as represented to the AUDA. The Secretary made representation that these officers require housing accommodation at Ahmedabad, and AUDA has accepted the request for allotment for their housing need. It seems neither AUDA was aware that the possession is taken by

another Society and in view of similarity in name another Society is making representation as if it was allotted to it on its application. On behalf of the Society affidavit was filed without disclosing that very near to Ahmedabad - i.e. at Gandhinagar, the capital of Gujarat, costly land at a concessional rate was already allotted for residence to these officers. In the affidavit it was stated, specifically, that these officers require plots for their residential purpose (not for commercial, flats or for transfer, rent etc.). For a common man, Government had not made such arrangements to provide land at concessional rate as the one provided to the Government servants, IAS/IPS officers at Gandhinagar. Here, at two places, plots are provided at concessional rate. It is in view of this situation, in paragraph 13 of the order, the Court dealt with the contention that the land is reserved for Public Housing and District Neighbourhood, and, therefore, no commercial use of the land is permissible. The Court specifically held that "looking to the evidence on record, there is nothing to show that the land will be used for commercial purpose or construction of super market". It is in the context of the submission before the Court that the land will be used for only residential purpose that the Court decided the issue. In other words, the respondent No.4 misled the Court to believe that the land was allotted to it on its application and will be used only for residential purpose so as to get a favourable verdict in its favour. Reading the last few lines of paragraph 9 of the order passed by the earlier Division Bench it is absolutely clear that the Court was lead to believe that there was only one Society, and that Society made the application, and AUDA allotted the land to that Society and payment was made by that Society. Moreover reading paragraph 15, we find that the Division Bench has observed that "initially the land was allotted in the year 1987 pursuant to the letter written by the Chairman of Sumangalam Cooperative Society". Though the respondent No.4 Sumangalam Society came into existence only on 5.7.1990, the Court was lead to believe that the allotment made in the year of 1987 was in favour of the Respt. No.4 Society. The Division Bench was also lead to believe that the land will be used only for residential purpose, and it is in this context that the Division Bench stated that the purpose is "public purpose".

##. In paragraph 17 of the judgment, the Division Bench has dealt with the contention about violation of the provisions of the ULC Act. The Court was informed through affidavit of Secretary that the land was allotted

to the [respondent No.4] Society and that the land will be utilised for residential purpose, the Court observed as under in paragraph 18 of the judgment:

> " ... From the documentary evidence it becomes amply clear that possession of 20,494 sq. mtrs of land has been delivered to the respondent Society (16,571 sq. mtrs. on June 1, 1990 and 3,923 sq. mtrs on February 26, 1991) for the purpose of 54 tenements (7 tenements on Final Plot No. 694 and 32 tenements on Final Plot No. 695 and 15 tenements on Final Plot No.696)."

##. Thus, it is absolutely clear that the Court was led to believe that the land was allotted to the respondent No.4 Society and that the plots will be utilised for construction of 'tenements'. It is in view of this fact that the Court rejected the contention. However, the fact remains that possession of the land was not delivered to the respondent No.4 Society and that instead of constructing tenements, some of these officers have constructed buildings for commercial purpose, and some has disposed of the plots where flats are constructed, and yet some have not started any construction activities at all.

##. In paragraph 19 of the judgment, the Division Bench has dealt with the price. Even reading this paragraph it clearly appears that the formation of different Societies was suppressed from the Court. Even the Court was lead to believe that amount was paid by the respondent No.4 Society whereas that Society was not even in existence on that date.

##. Thus, after getting favourable order from the Court by filing an affidavit before the Court that the land is allotted for construction of residential premises to its members, the members have constructed the premises and are using it for commercial purposes. A material question to be asked here is, if the Society which made the application to AUDA had stated in their application that they want some land for construction of some commercial premises, or even residence-cum-commercial premises, would AUDA have allotted the land? The answer to this from any prudent man would be in the negative. Even before the Court earlier, their explicit stand was that the allotment of land is for residential purpose. After making the Court to believe by filing an affidavit that the land is to be used for residential purpose, and if thereafter, it is not used for the said purpose, it amounts to nothing but playing a fraud on the Court, an

abuse of the process of the Court, and falls nothing but short of perjury - by the deponent personally and by the members collectively. It also amounts to contempt of the Court more particularly when the respondent Societies are trying to take shelter under the order. It is pertinent to note that in the affidavit filed by Mr. Varesh Sinha in this proceedings (page 27 to 37) at page 31 after referring to the earlier proceedings, he has gone to the extent of stating that:

> "I say that these issues are already adjudicated upon and that therefore they are banned by the principles of res judicata and/or the principles analogous to res judicata."

RES-JUDICATA

##. It has been contended on behalf of some of the respondents that this proceedings is barred by res-judicata. In the case of RURAL LITIGATION & ENTITLEMENT KENDERA vs. STATE OF U.P. reported in AIR 1988 SC 2187 in paragraph 16 the Apex Court held as under:

> "The writ petitions before us are not inter-party disputes and have been raised by way of public interest litigation and the controversy before the Court is as to whether for social safety and for creating a hazardless environment for the purpose to live in, mining in the area should be permitted or stopped. We may not be taken to have said that for public interest litigations, procedural laws do not apply. At the same time it has to be remembered that every technicality in the procedural law is not available as a defence when a matter of grave public importance for consideration before the Court. Even if it is said that there was a final order, in a dispute of this type it would be difficult to entertain the plea of res judicata.

##. Again, the Apex Court in the case of STATE OF GUJARAT & OTHERS v/s M.P. SHAH CHARITABLE TRUST reported in (1994) 3 SCC 552, in paragraph 17, held as under:

> "For attracting the rule of res judicata between co-defendants - according to the terms in section 11 of the Civil Procedure Code which provision of

course is not, in terms, applicable to proceedings in a writ petition - it is necessary that there should have been some issue directly and substantially in controversy between them which has been heard and finally decided by the court. Same would be the position, where a plea of res judicata is sought to be raised between co-respondents in a writ petition, on the general principles of res judicata. Since the said basic requirement is not satisfied, the said judgment cannot be treated as res judicata between the trust and the Government. ... That does not even give rise to an estoppel in the facts of this case."

##. In the case of PAWAN KUMAR GUPTA vs. ROCHIRAM NAGDEO reported in (1999) 4 SCC 243, the Apex Court held as under in paragraph 16 of the judgment:

"The rule of res judicata incorporated in Section 11 of the Code of Civil Procedure (CPC) prohibits the court from trying an issue which 'has been directly and substantially in issue in a former suit between the same parties', and has been heard and finally decided by that court. It is the decision on an issue, and not a mere finding on any incidental question to reach such decision, which operates as res judicata".

##. In the facts and circumstances of the instant case it cannot be at all said that the issues involved in this petition have been directly and substantially in issue before the earlier Division Bench which heard and finally decided. It cannot be said that there is a decision in the judgement of the earlier Division Bench on the issues which are involved in this petition. On the contrary, it is stated before us that before the Division Bench in the earlier proceedings, the only question was about fixation of price, land for builders, and, no other issues were dealt with by the Court and the Court was not called upon to determine any other question. That apart, as stated by us hereinabove, an order was obtained from the Court by suppressing materials facts. Hence there is no merit in the submission that this proceedings is barred by res judicata.

##. It does not lie in the mouth of the respondent to speak about 'principles of res judicata' after having obtained an order from the Court by suppressing material

facts. The respondent Societies are, therefore, estopped from placing any reliance on this order. The Court is also of the opinion that the deponent and the members of the Society must also be proceeded against for playing fraud with the Court and consequently contempt of Court also. The Court is also of the view that this affidavit amounts to perjury as apart from the aforesaid contention of 'principles of res judicata' there are also false averments on oath.

##. In the case of INDIAN BANK vs. SATYAM FIBRES (INDIA) (P) LTD. reported in (1996) 5 SCC 550, the Apex Court held that fraud committed before the court amounts to abuse of process of the Court. The Court further held that in appropriate cases, decree/order obtained by committing fraud before the Court can be recalled. The Apex Court further held that since fraud affects the solemnity, regularity and orderliness of the proceedings of the Court and also amounts to an abuse of the process of Court, the Courts have been held to have inherent power to set aside an order obtained by fraud practised upon that Court. When the Court is misled, the Court has inherent power to recall its order.

##. In the case of DELHI DEVELOPMENT AUTHORITY vs. SKIPPER CONSTRUCTION CO. (P) LTD. [(1996) 4 SCC 622], the Apex Court held that Courts in India as Courts of equity have the power to reach the illegally obtained property even in the hands of relatives and associates and restore it to the victims of the fraud or corruption by public officials and pass necessary orders and direction. The Apex Court further held that Courts in India are not only courts of law but also courts of equity and public accountability demands forfeiture of ill-gotten gains and restoration to those deprived. The Apex Court further held that if it is found that someone has acquired properties by defrauding, the Court can make all necessary orders, and this is what equity means and in India the Courts are not only court of law but also courts of equity.

##. In the case of STATE OF MAHARASHTRA vs. BUDHIKOTA SUBBARAO reported in (1993) 2 SCC 567, the Apex Court held that fraud is a false representation by one who is aware that it was untrue with an intention to mislead the other who may act upon it to his prejudice and to the advantage of the representor. Effect of fraud on any proceedings or transaction is that it becomes a nullity. Even the most solemn proceedings stand vitiated if they are actuated by fraud.

##. In the case of GOWRISHANKAR vs. JOSHI AMBA SHANKAR FAMILY TRUST reported in (1996) 3 SCC 310, the Apex Court held that order of the High Court obtained by fraud is a nullity.

##. The power of the Court to recall an order obtained by fraud is reiterated in the judgment of the Apex Court in the case of BUDHIA SWAIN vs. GOPINATH DEB reported in (1999) 4 SCC 395.

##. In the case of S.P. CHENGALVARAYA NAIDU vs. JAGANNATH reported in (1994) 1 SCC 1, the Apex Court held that judgment or decree obtained by fraud is to be treated as a nullity and can be questioned even in collateral proceedings. The Court specifically held that non-disclosure of relevant and material documents with a view to obtain advantage amounts to fraud. The Apex Court specifically held that the principle of 'finality of litigation' cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud.

##. In the case of A.P. STATE FINANCIAL CORPN. V. M/s. GAR RE-ROLLING MILLS reported in AIR 1994 SC 2151, the Apex Court observed that the Court while exercising its equitable extraordinary jurisdiction under Article 226 of the Constitution of India would assist provided there is no fraud or misrepresentation. One should know that the aim of equity is to promote honesty and not to frustrate the legitimate rights of AUDA. Members of the respondent No.4 Society have no right even in equity to request the Court that the Court should assist them because they have parted with some money. The Court of equity would exercise its equitable jurisdiction under Article 226 of the Constitution of India so as to prevent perpetration of a legal fraud and the courts are obliged to do justice by promotion of good faith, as far as it lies within their power. Equity is always known to defend the law from clefty evasions and new subtleties invented to evade law.

###. In view of the facts stated above, there is absolutely no doubt that the judgment of the earlier Division Bench was obtained by nondisclosure of relevant and material facts and documents with a view to obtain advantage, and is a fraud on the Court and, therefore, is a nullity. The respondent Societies are estopped from placing any reliance on the judgment in the earlier proceedings. It is a fraud on the Court.

PUBLIC ACCOUNTABILITY OF GOVT. OFFICERS :

###. These high ranking officers, who must set an example to citizens are violating law and obviously other citizens would take lessons from them. We find from the statement produced on oath by the Chairman of AUDA that except Shri Varesh Sinha, nobody is residing in the buildings, and even Mr. Varesh Sinha is occupying only third floor. It is very clear that out of the 54 allottees, 17 have constructed buildings, (3 buildings are under construction) and 34 plots are yet open. It is also clear that the persons who have constructed the buildings have transferred or parted with the property either by sale or an agreement to sell or on rent, lease or some other mode.

###. It would be relevant at this stage to refer to paragraph 12 of the affidavit filed by AUDA, which we reproduce hereinbelow:

> "12. I say that in some of the premises at Sr. No. 9, 10, and 11 of Annexure -III of this affidavit-in-reply which being used as 'flats' (emphasis supplied by us) but Ahmedabad Urban Development Authority does not have any details about occupants, whether they are original owners or transferees or tenants since they have not obtained permission of Ahmedabad Urban Development Authority."

###. In the case of SECRETARY, JAIPUR DEVELOPMENT AUTHORITY vs. DAULAT MAL JAIN reported in (1997) 1 SCC 35, the Apex Court observed as under in paragraph 12 of the judgment:

> "The Government acts through its bureaucrats, who shape its social, economic and administrative policies to further the social stability and progress socially, economically and politically. Actions of the Government, should be accounted for social morality. Therefore the actions of the individuals would reflect on the actions of the Government. The actions are intended to further the goals set down in the Constitution, the laws or administrative policy. The action would, therefore, bear necessary integral connection between the 'purpose' and the end object of public welfare and not personal gain. The action cannot be divorced from that of the individual actor. The end is something aimed at

and only individuals can have and shape the aims to further the social, economic and political goals".

###. In the case of LUCKNOW DEVELOPMENT AUTHORITY vs. M.K. GUPTA reported in (1994) 1 SCC 243, the Apex Court held in paragraphs 8 that the administrative law of accountability of public authorities for their arbitrary and even ultra vires actions has taken many strides. It is now accepted that the State is liable to compensate for loss or injury suffered by a citizen due to arbitrary actions of its employees. It is not necessary to consider whether there is any rational dividing line between the so-called sovereign and proprietary or commercial functions for determining the liability of the State. In any case the law has always maintained that the public authorities who are entrusted with statutory function cannot act negligently. Under our Constitution sovereignty vests in the people. Every limb of the constitutional machinery is obliged to be people oriented. No functionary in exercise of statutory power can claim immunity, except to the extent protected by the statute itself. Public authorities acting in violation of constitutional or statutory provisions oppressively are accountable for their behaviour before authorities created under the statute like the commission or the courts entrusted with responsibility of maintaining the rule of law.

###. In the case of DELHI DEVELOPMENT AUTHORITY (Supra), the Apex Court observed in paragraphs 31 and 32 that a law providing for forfeiture of properties acquired by holders of 'public office' (including the offices/posts in the public sector corporations) by indulging in corrupt and illegal acts and deals, is a crying necessity in the present state of our society. The law must extend not only to - as does SAFEMA properties acquired in the name of the holder of such office but also to properties held in the names of his spouse, children or other relatives and associates. Once it is proved that the holder of such office has indulged in corrupt acts, all such properties should be attached forthwith. The law should place the burden of proving that the attached properties were not acquired with the aid of monies/properties received in the course of corrupt deals upon the holder of that property as does SAFEMA. Such a law has become an absolute necessity, if the canker of corruption is not to prove the death-knell of this nation. According to several perceptive observers, indeed, it has already reached near-fatal dimensions. ... The fiduciary relationship may not exist in the

present case nor is it a case of a holder of public office, yet it is found that someone has acquired properties by defrauding the people and if it is found that the persons defrauded should be restored to the position in which they would have been but for the said fraud, the Court can make all necessary orders. This is what equity means and in India the courts are not only courts of law but also courts of equity.

###. In the case of INDIAN COUNCIL FOR ENVIRO-LEGAL ACTION vs. UNION OF INDIA reported in (1996) 5 SCC 281, the Apex Court observed in paragraph 26 as under:

"Enactment of a law, but tolerating its infringement, is worse than not enacting a law at all. The continued infringement of law, over a period of time, is made possible by adoption of such means which are best known to the violators of law. Continued tolerance of such violations of law not only renders legal provisions nugatory but such tolerance by the enforcement authorities encourages lawlessness and adoption of means which cannot, or ought not to, be tolerated in any civilized society. Law should not only be meant for the law-abiding but is meant to be obeyed by all for whom it has been enacted. ... ... Otherwise, infringement of law, which is actively or passively condoned for personal gain, will be encouraged which will in turn lead to a lawless society."

###. The Division Bench of this Court (Coram: G.N. Ray, CJ - as His Lordship then was - and C.K. Thakkar, J - as His Lordship then was) has observed as under in paragraphs 4 and 5 in their judgment in the aforesaid matters, i.e. Spl. C.A. No. 3082/91 and 3781/91:

"In accordance with the provisions of the Gujarat Town Planning and Urban Development Act, 1976 (hereinafter referred to as "the Act"), a town planning scheme known as Town Planning Scheme No. 1-B, of Bodakdev was prepared. Initially a preliminary scheme was final scheme was prepared and the said scheme has been approved by the State Government. The effect of the sanction of the preliminary or final scheme by the State Government is laid down in sub-section (3) of section 65 of the Act, which reads as under :-

"(3). On and after the date fixed in such notification, the preliminary scheme

or the final scheme, as the case may be, shall have effect as if it were enacted in this act". (emphasis supplied).

In other words, the statutory finality is given to the scheme and after the sanction by the State Government and issuance of the notification in the official gazette, the scheme can be challenged treating it as a part of the legislation itself. (vide Dugerlal vs. State of Gujarat : 17 GLR P. 1152 (FB))."

###. As indicated hereinabove, application was made for the purpose of residence and the plots were allotted to the cooperative society considering the need. When the public authority has given plots for residence only and the plots are used contrary to that, it should have been viewed very seriously and actions ought to have been taken. It is in view of this situation, the question of public accountability is important.

###. In the case of Mahesh Chandra vs. Regional Manager, U.P. Financial Corporation [A.I.R. 1993 SC 935], {Page 936, Head Note - C} the Apex Court pointed out that `Every wide power, the exercise of which has far-reaching repercussion, has inherent limitation on it. It should be exercised to effectuate the purpose of the Act. The exercise discretion should be objective. Test of reasonableness is more strict. The public functionaries should be duty conscious rather than power charged. Its actions and decisions which tought the common man have to be tested on the touch-stone of fairness and justice.'

###. In the case Lucknow Development Authority vs. M.K.Gupta [A.I.R. 1994 SC 787], the Apex Court in paragraph - 11 of the Judgment observed as under:

"Today the issue thus is not only of award of compensation but who should bear the brunt. The concept of authority and power exercised by public functionaries has many dimensions. It has undergone tremendous change with passage of time and change in socio-economic outlook. the authority empowered to function under a Statue while exercising power discharges public duty. It has to act to subserve general welfare and common good. in discharging this duty honestly and bona fide loss may accrue to any person. And

he may claim compensation which may in circumstances be payable. But where the duty is performed capriciously or the exercise of power results in harassment and agony then the responsibility to pay the loss determined should be whose. In a modern society no authority can arrogate to itself the power to act in a manner which is arbitrary. It is unfortunate that matters which require immediate attention linger on and the man in the (street is) made to run from one end to other with no result. The culture of window clearance appears to be totally dead. Even in ordinary matters a common man who has neither the political backing nor the financial strength to match inaction in pubic oriented departments gets frustrated and it erodes the credibility in the system. Public administration, no doubt involves a vast amount of administrative discretion, which shields the action of administrative authority. But, where it is found that exercise or discretion was mala fide and the complainant is entitled to compensation for mental and physical harassment then the officer can no more claim to be under protective order. When a citizen seeks to recover compensation from a public authority in respect of injuries suffered by him for capriciously exercise of power and the National Commission finds it duly proved then it has statutory obligation to award the same? It was never more necessary than today when even social obligations are regulated by grant of statutory powers. The test of permissive and implicit in the exercise of power that it should be for the sake of society. When the Court directs payment of damages or compensation against the State the ultimate sufferer is the common man. It is the tax payers' money which is paid for inaction of those who are entrusted under the Act to discharge their duties in accordance with law. It is, therefore, necessary that the Commission when it is satisfied that a complainant is entitled to compensation for harassment or mental agony or oppression, which finding of course should be recorded carefully on material and convincing circumstances and not lightly, then it should further direct department concerned to pay the amount to the complainant from the public fund immediately but to recover the same from those who are found responsible for such unpardonable behaviour by dividing it

proportionately where there are more than one functionaries."

###. In the case of Dr.G.N.Khajuria & Ors. vs. Delhi Development Authority & Ors. [(1995) 5 SC 762], the Apex Court pointed out as under:

"8. We, therefore, hold that the land which was allotted to Respondent 2 was part of a park. We further hold that it was not open to the DDA to crave out any space meant for park for a nursery school. We are of the considered view that the allotment in favour of Respondent 2 was misuse of power, for reasons which need not be adverted. It is, therefore, a fit case, according to us, where the allotment in favour of Respondent 2 should be cancelled and we order accordingly. ....

10. Before parting, we have an observation to make. The same is that a feeling is gathering ground that where unauthorized constructions are demolished on the force of the order of courts, the illegality is not taken care of fully inasmuch as the officers of the statutory body who had allowed the unauthorized construction to be made or make illegal allotments go scot free. This should not, however, have happened for two reasons. First, it is the illegal action/order of the officer which lies at the root of the unlawful act of the citizen concerned, because of which the officer is more to be blamed than the recipient of the illegal benefit. It is thus imperative, according to us, that while undoing the mischief which would require the demolition of the unauthorized construction, the delinquent officer has also to be punished in accordance with law. This, however, seldom happens. Secondly, to take care of the injustice completely, the officer who had misused his power has also to be properly punished. Otherwise, what happens is that the officer, who made the hay when the sun shined, retains the hay, which tempts others to do the same. This really gives fillip to the commission of tainted act, whereas the aim should be opposite."

###. In the instant case, the allotment of the land, the so-called fixation of the price, the handing over & taking over the possession of the land etc. indicate that either by an act of omission or commission, these

officers have committed acts, which cannot be justified as just, fair and reasonable. The general welfare and common good have been given a go-bye, by these public servants and its end object is not public welfare, but personal gain. In this situation, the principle of public accountability is attracted in the instant case.

DUAL MEMBERSHIP IN CO-OP. SOCIETY :

###. In the instant case the Registrar of Co-Operative Societies, respondent No. 6, has placed before us the xerox copies of the applications for registration of the Societies submitted by the members of these societies. Shri C.J. Jose who was allotted plot of land in F.P. No. 694, sub-plot No. 01 admeasuring 344.72 sq. mtrs. was a member of the Respondent No.2 Society which was formed by 12 members and which was registered at Gandhinagar. Twelve persons submitted an application along with an affidavit. It is specifically stated in the said affidavit, which is a joint affidavit, that none of the members who are making the proposal to form the Society, is a member of any other Co-Operative Housing Society, and none of the member is holding plot, house or land. It is also specifically stated on oath by all of them in joint affidavit that if the land is obtained by any other mode, then before that, permission of the department shall be obtained. In the affidavit filed by Mr. C.J. Jose, he has stated on oath that neither he nor any member of his family is holding any property in the city of Ahmedabad or within 16 kms. area or have any land to construct the house. It is further stated that neither he is a member of any Co-Operative Housing Society, nor any member of his family is a member of any Co-Operative Housing Society. He was aware that if the affidavit was found to be false, then he is liable to be prosecuted under the provisions contained in the Co-Operative Housing Societies Act. For this purpose also, he has sworn separate affidavit. In his individual affidavit, he has kept the column blank for indicating whether he or any member of his family has house in any Society or a plot in any Society. So far as membership of any other Society is concerned, he has specifically stated that he was a member of the Housing Society in Ahmedabad and flat allotted to him is in possession of one Shri Yadav with whom an agreement for transfer with knowledge of the Society has been made, and the document will be executed shortly. Similar statement is also made in Form 'B'.

###. Shri S Jagadeesan who was at the relevant time Municipal Commissioner, Rajkot has also sworn a joint

affidavit as well as an individual affidavit in which he has also stated similar facts as we have stated hereinabove in the case of Shri C.J. Jose. Similarly, he has also filed an affidavit about his knowledge that filing of false affidavit is punishable. In his individual affidavit he has also kept the column blank where he was required to state whether he himself or any member of his family has a plot or house in any Co-Operative Society or not, and that whether in his name or in the name of any family member he has obtained any property or asset or not. In form 'B', no details are given.

###. Shri A Prasad has also filed an affidavit similar to that of Shri C.J. Jose. He too has filed a joint affidavit. He has also filed an affidavit about the fact that if the affidavit is false, he is liable to be prosecuted. In his individual affidavit, he has stated that he has a property in Sanket Row House bearing No. 106, Memnagar, District Ahmedabad (Ahmedabad - as Memnagar is part of AUDA). He was working at the relevant time as Commissioner of Land Reforms and Secretary (LR) (RD). In the column with regard to property owned by him in Co-Op. Housing Society, he has stated as under:

"Acquired by purchase from Sulabh Co-Op. Housing Ltd. Purchased Sanket Raw House No.106 at Memnagar Dist. Ahmedabad. T. City. Purchased through Govt. HBA. Present value Rs.81,000/-.

In form 'B' he has indicated about the property at Sanket Raw House at Memnagar.

###. Out of the aforesaid three persons, (i.e. C.J. Jose, S Jagadeesan and A. Prasad), Shri S Jagadeesan and C.J. Jose though they were members of the respondent No. 2 Society registered on 10.10.1986, i.e. Sumangal Co-Op. Housing Society Ltd., Gandhinagar, became members of the Respondent No.3, New Sumangal Co-Op. Housing Society Ltd., Tal. Daskroi having registration No. 13338 dated 22.5.1989. Shri S. Jagadeesan filed an affidavit interalia stating that neither he nor any of his family member has any house or land in the city of Ahmedabad or within the radius of 16 kms. He has further stated on oath that neither he nor any member of his family has become member in any Co-Operative Housing Society. He has also shown his knowledge about the action which can be taken for filing a false affidavit. He has filed Form

'B' wherein he has not stated as to whether any property is held by him. He has specifically stated in his individual affidavit that neither he nor any member of his family has acquired any plot or house in any Co-Operative Housing Society. He has further stated that neither he nor his family member has become member in any Co-Operative Housing Society. Similarly Shri C.J. Jose has also filed an affidavit. However, in the declaration and in a separate affidavit, he has stated that neither he nor any of his family member has any house or plot in a Co-Op. Society. However, he has kept the column blank in the affidavit indicating whether he or any of his family member has any house in any Co-Operative society.

###. It is required to be noted that Shri C.J. Jose, S. Jagadeesan and A. Prasad also became members of Sumangalam Co-Op. Housing Society, Bodakdev having registration No. 14292 dated 5.7.90. There also, all the three have filed affidavits interalia stating that no property is owned by any of them or by any of their family members in the City of Ahmedabad or within the radius of 16 kms. They have also stated that none of them has become member of any Co-Operative Housing Society in Ahmedabad City or within 16 kms. radius. It is also stated that none of their family members have become member of any Co-Operative Society. Shri S Jagadeesan in his individual affidavit has stated that neither he nor any of his family member has membership of any Co-Op. Housing Society. Shri C.J. Jose in his affidavit has stated in the affirmative against the column where it is mentioned that whether he or any member of his family has obtained membership or not. Shri A. Prasad has filed an affidavit stating that neither he nor any of his family member has become member in any Co-Operative Housing Society and neither he nor any of his family member has land for construction of residential property. At the time of filing this affidavit, he was Chairman of AUDA. Against column No. 10 which was meant to indicate whether he or any of his family member has acquired house or plot in any Society, he has replied in negative on oath. Against column No. 11 wherein one was required to indicate whether he or any member of his family has become member of any Co-Op. Housing Society, he has stated specifically in the negative. In the affidavit filed for becoming member of the Society which was registered on 5.7.1990 he has stated to have not acquired any property.

###. Shri K.V. Bhanujan, R.D. Tamhney, D. G. Pandiyan, S.N. Sinha were members of the respondent No. 2 Sumangal Co-Op. Society (Reg. No. 9675 dt

10.10.1986) and respondent No.3 New Sumangal Co-Op. Society (Reg. No. 13338 dated 22.5.1989). In the affidavit filed by Shri K.V. Bhanujan he has stated that neither he nor any of his family member has any house or land in the city of Ahmedabad or within 16 kms. radius of the city. He has further stated on oath that neither he nor any of his family member is a member of any Co-Op. Housing Society in Ahmedabad or within the radius of 16 kms. of Ahmedabad. It is also indicated in the affidavit that he was aware of the fact that if a false affidavit is filed, he is liable to be prosecuted. Individual affidavit is also filed to point out whether he or any of his family member has any property in any Co-Op. Housing Society. These four persons became members of the respondent No.3 Society at Bodakdev and have filed similar affidavit. Thus, it is clear from the record produced by the Registrar of Co-Operative Societies, Respondent No.6, that these high ranking IAS/IPS Officers have filed these false affidavits/declarations only with an object of getting plots.

###. It must be noted here that when the Society Resp. No.4 was formed, plots were allotted at Gandhinagar. Thus, they had lands at Gandhinagar. Yet, they have come out with a case that they do not have property/land/house.

###. It is also required to be mentioned here that from the documents produced by Jayshree Dewangan, Resident Collector, at pages 640 to 648, it appears that some of the members of the respondents - societies are also the members of Karmyog Cooperative Housing Societies Limited.

###. About the stipulation of 16 kms radius, the original printed forms do not have such distance stipulation. It seems that the distance stipulation is added for the convenience of these officers. Nothing is placed on record to justify as to why 16 kms. radius is added even though no such stipulation was in the prescribed form.

WHO PAID THE AMOUNT:

###. The Ahmedabad Urban Development Authority (Disposal of Land and other Properties) Regulations, 1984 indicate payment of premium, execution of deed, delivery of possession etc. Rule 9 of the said Regulations refers to payment of premium/purchase price. The rules also refer to execution deed and delivery of possession, which

suggests that only after payment of the whole amount of purchase price, and/or premium, a deed of sale or lease as the case may be shall be executed, the possession of the land or the property may be delivered before the execution of such deed, if so decided by the authority/committee/chief Executive on payment of full payment of purchase price or premium. This Regulation is required to be read along with the affidavit filed on behalf of AUDA. At page 559, AUDA has conclusively stated that:

> "I submit that thus under these circumstances, the Hon'ry Secretary of Sumangalam Co-Op. Housing Society (Registration No. 9675/86) who had asked for the land, was handed over the possession of the land".

###. The deponent i.e. Chief Executive Authority is certain that possession of the land was handed over to the Society which had registration No. 9675/86, i.e. respondent No.2 Society of Gandhinagar, and not respondent No.4 Society of Ahmedabad.

###. On behalf of the members, who have transferred their plots or given properties on rent, it was submitted that whether resolution was passed in favour of this society or other is not a relevant question. According to them, relevant fact is that who paid the price and from whose pocket the amount has come? It was submitted that who paid the amount and who got the land is required to be seen. We have indicated that on behalf of AUDA it is stated that the society, which submitted the application for allotment of land has been given possession. It is clear that the society registered at Gandhinagar made payment and not the society registered at Ahmedabad [Bodakdev]. Rule 9 of the Ahmedabad Urban Development Authority [Disposal of Land & Other Properties] Regulations, 1984 refers to payment of premium / purchase price. It refers to execution of deed and delivery of possession. When AUDA has clearly pointed out that the plots were allotted to the society, which made the application and when the record reveals that the payment was not made by the respondent no.4, it is hardly proper on the part of the respondent no.4 society to say that it made the payment.

###. At this juncture, it is required to be noted that Respondent No.4 Society was constituted on 05.07.1990 and on that date it had only 10 members [page 484]. As on 13.09.1990, it had 25 more members [page 490-491]. At page 492, a list containing 19 names is produced with a

specific note that person at Sl. Nos. 1 to 5 were admitted as members on 13.09.1990 as members and persons at Sl. Nos. 6 to 19 were admitted as members on 13.04.1992. Now, payment of Rs.6,65,000/- is made on 16.06.1989 and payment of Rs.1,30,85,000/- is made on 30.05.1990 - both before formation of Respondent No.4 Society. It is Respondent No.2's case that it had not made payment of Rs.1,30,85,000/-. If Respondent No.4 was in the process of adopting members till 1992, how a huge sum of Rs.1,30,85,000/- is made on 30.05.1990. It goes without saying that loan from State Bank of Saurasthra has been obtained by making representations can not be believed. No document is placed by Respondent No.4 indicating its source of money.

###. In paragraph 2 (iv) of the affidavit filed by Ms. Gauri Kumar, she has stated that the contributions made by this Society's members above referred at Annexure-III were taken as having been made for the Respondent No.4 Society instead of this respondent Society obtaining refund from the AUDA authorities and the Respondent No.4 making fresh payments to the AUDA authorities. It is a matter of surprise that high executives of the State are making such statement. All the members of the Resp. No.2 Society are not members of the Resp. No.4 Society. Both are separate legal entities. It is too much to presume that a legal entity is a hand-maiden of these officers and could be manipulated in the way it has been done in this case. Question of refund would arise in case Respondent No.2 requested for cancellation of allotment.

###. In this connection, it would be also relevant to refer to the affidavit filed by Shri S. Jagadeesan before the Registrar of Co-Operative Societies which is at page 539 to 543 on behalf of the Respondent No.4 Society. In paragraph No.3 (4), it has been stated that the Society has only Rs.2550/- as on 19.6.1990 in its account with District Co-Operative Bank, and other than this Bank, the Society has no other Bank Accounts. In all there were 10 members, and nothing is indicated about the amount collected from them. Even with regard to the land, it is not stated that Resp. No.4 Society that it has obtained land (see page 540) and has paid amount for land giving details of the contribution from members by giving their details. In the absence of giving details as required for in sub-clauses (4), (5), (6). (7) (8) at page 540, it must be presumed that the amount is not collected and is not paid to AUDA otherwise Respondent No.4 would have filled in the details to show that the amount is paid and land is acquired. Thus, lame excuse

is shown.

###. Auditor's Note clearly indicate that Rs.6,65,000-00 have been credited towards land contribution. On 29.6.1989, a sum of Rs.6,65,000-00 have been transferred to Sumangal Co-Op. Housing Society Ltd., Bodakdev, Daskroi, Ahmedabad. This could have been indicated by the Auditor is a question to be inquired by the Government. On page 407 also, he has stated the same thing. On 29.6.1989, there was no question of making payment on behalf of another Society or crediting the amount as indicated at page 407. The Receipt issued by AUDA for payment of this Rs.6,65,000/- is at page 571. The receipt clearly reveals that the amount by cheque was paid to AUDA and not to Respondent No.4 Society. Thus, for the purpose of winding up, this show is made. In fact, AUDA has specifically stated that the land was given to the Society which made the application, viz. the respondent No.2. This Society has not produced before the Auditor, the declaration filed by the members. It has not maintained any register for resolution made by the Executive Committee. It has not produced share certificate book or share register. At page 410 even unsigned rectification report is produced to state that on 29.6.1989, vide cheque No. 66044, amount was withdrawn and paid to Sumangalam Co-Op. Housing Society. This is far from truth, and, therefore, this affidavit filed by the author cannot be accepted.

###. Shri S. Jagadeesan has addressed a letter, the xerox copy of which is at page 577 as Secretary of Resp. No.2 Society, which was received by AUDA on 27.12.1989. In that letter, Shri Jagadeesan has specifically stated that on 16.6.1989, vide receipt No.38302, the amount has been paid. Thus, Ms. Gauri Kumar has not come out with true version.

###. Mr. Thakore submitted that the respondent No.2 reconstructed its accounts and the Society was dissolved. Funds of the Society were not returned to the members, and it was treated as the amount being paid by the Respondent No.4 Society. When the Society was not in existence it cannot be said so. In the report at page 407, there is some thing different. Later on, the record produced by AUDA as well as the receipt produced, there is some thing different. Therefore, no reliance can be placed on such affidavit.

###. On behalf of the Respondent No.4 Society, the following books of account have been produced on record.

(1) Individual land account of members of the Respondent No.4 Society towards land contribution

(2) Personal share account of the members of the Respondent No. 4 Society

(3) Resolution book of the Executive Committee of the Respondent No.4 Society for the period from March 1995 to August 2000

(4) Resolution book in relation to Annual General Meeting of the Respondent No.4 Society for the period March 1995 to September 2000

(5) Cash Book for the year 1994-95 & 1995-96

(6) Cash Book for the year 1996-97

(7) Cash Book for the year 1997-98

(8) Cash Book for the year 1998-99

###. It is very clear from the account books produced by the Respondent No.4 Society that only 10 members joined initially and contributed Rs.250/- towards the amount of share. 30 members became members on 30.9.1990. One joined as member on 1.10.1990. On 1.12.1990 another member was admitted, however his amount was returned somewhere in December 1992 and on the same day another member was admitted. It appears that on 1.10.1990 other 5 members joined the Society by paying Rs.250/- towards share amount and subsequently in January 1993, the amount was returned to them and in their place five others were taken. Another member joined on 9.4.1992 and yet another joined in March 1993. The tall claim that Respondent No.4 paid the amount cannot be accepted as it had only 10 members initially. Others joined subsequently and some much after the alleged allotment. When there were only 10 members, there is no question of contribution and making payment. No evidence is produced that all contributed at a time.

###. Respondent No.4 has also produced Day Book for the year 1994-95 to 1998-99, which is meant to record all transactions. However, it has not produced the day-book for the relevant year i.e. 1990-91, 1991-92 and 1992-93.

###. Similarly Minutes Book for recording the minutes of the Managing Committee and Annual General Meeting has also been produced before us. One book does not reflect the look of a Minute Book at all, as there is no seal of the Society and no running page number, whereas in the other minute book, seal has been affixed and has running page number. On perusing the Minute Book, it is clear that at various pages though names of the Committee members are written, it has not been signed by all. Certain minutes are signed only by one or two persons though all are shown to have been present in the meeting. There are also over-writings and insertions subsequently in the minutes of certain minutes. There are also blanks in certain minutes.

###. Reading the accounts books and the Minutes Books, there is absolutely no doubt that the affairs of the Respondent No.4 society is run in a most shabby way. The books of account, i.e., day book of relevant period and minutes books are not produced before the Court.

CHANGE OF USER:

###. In the instant case, M/s. Pandya and Panchal learned advocates, representing respondents No. 8 and 9 respectively (viz. Shri S Jagadeesan and Shri M. Sahu) submitted that so far as their clients are concerned, applications were given to AUDA and AUDA has granted them permission for change of user, and therefore, their clients are entitled to use the building as per the permission. This submission cannot be available to them in the light of the glaring facts which are as under:

###. These two officers were given individual plots for residential purpose. They have amalgamated the plots. AUDA permitted such amalgamation as stated in their affidavits; AUDA also permitted construction, about which we have referred to hereinabove. They are not using the premises for residence at all. The basement is used for safe deposit vault, ground floor is used for bank and office, first floor for office, and second floor is not yet constructed. What is required to be considered is: Whether AUDA could have permitted the use of building for the purpose other than residence? In the instant case, what M/s. Pandya and Panchal learned advocates submit is that looking to the use zone table for predominantly residential zone, the following type of development is primarily intended.

"Dwelling houses, detached, semi detached tenements, row houses, chawls, flats and any

other residential buildings. Public residential buildings such as lodging house (excluding hostels, residential clubs), Schools, libraries, Colleges and Public assistance, institutions, residential technical educational institutions, clinics, dispensary health centres, hospitals, nursing homes, sanitoriums, retail shops of day to day needs upto 20 sq. mts. building area only, public utility service buildings, community hall, places of public worship, religious assembly of local character. Customary home occupation and cottage industries not involving the use of or installation of any machinery driven by power of any kind and which do not create noise, vibration dust etc. provided that such home occupations and cottage industries shall not be permissible in the tenement dwelling or flats. Parking lots. Recreational uses public and semi public recreational grounds, play fields, gardens, parks and open spaces, gymnasium, swimming pool, sport ground, green belts.

###. M/s. Pandya & Panchal, learned advocates further submitted that in predominantly residential zones, the following type of development may be permitted by competent authority:

"Restaurant, tea & coffee houses, bank branches, auditorium, town hall, place of public assembly, service establishment (residential light home workshop)."

###. The land was given by AUDA for the purpose of constructing residential houses/tenements. The word 'residence' as defined in section 2 (xxiv) in Gujarat Town Planning & Urban Development Act, 1976 reads as under:

"residence" includes the use for human habitation of any land or building or part thereof, the use of gardens, grounds, garages, stables and outhouses, if any, appertaining to such land or building, and the expression "residential" shall be construed accordingly."

###. If the owner of a private plot of land takes shelter of the above "Use Zone Table" and seeks permission from the Development Authority to permit him for the development for the 'permissible' use, one can

understand the situation. What is required to be considered in the instant case is, the land was allotted for a period of 90 years with several conditions to the Society consisting of persons in IAS / IPS cadre for constructing their residential premises. In addition to that, the present Society was not put in possession as it did not exist on the date of handing over the possession as discussed hereinabove. Such a plot of land cannot be equated with a private plot of land as under the permission granted under Section 20(1) of ULC Act, the plots were to be used for residence only. The owner of a private plot of land may do so for profiteering, but the land allotted to IAS / IPS officers for residential purposes can never be used for profiteering, and taking shelter of the permissible use for profiteering cannot be permitted. More so, when in the earlier proceedings, in clear, certain and unambiguous terms it was stated on oath before the Court that the land was required for housing purpose only and it is not going to be used for commercial purpose. The plot of land is allotted on lease for a period of 90 years for residential purpose only, and changing the use to commercial or other than residential would frustrate the purpose of allotment. Hence, the high ranking IAS / IPS officers cannot take shelter of the permissible use indicated in the Use Zone Table and use the land for profiteering. The distinguishing aspect in the instant case is that the land in the instant case is not of private ownership, but the land is allotted to them by AUDA on lease for 90 years for residential use.

###. Mr. Shelat, learned Additional Advocate General submitted that law is clear on the point and that there is no authority with AUDA to permit the change of user in a building, if it is in a residential zone, for use of any other purpose than residential. If the change is not permitted under the rules which are framed under the statute, then the Chairman or any subordinate officer of AUDA cannot grant permission for change of user. Mr. Shelat submitted that as the development plan stands, it is not permissible to change the use. He further submitted that recently, in the cases filed against the Ahmedabad Municipal Corporation, the Court has taken a view and in those cases, the Court has not allowed the use of buildings in predominantly residential zone for any purpose other than residence. It was also pointed out that permission to hold land is granted on certain conditions; one of which is use for the purpose residence.

###. This Court has taken the following view in Spl.

C.A. No. 6794/1992 decided on 4.10.2000 :-

" .... where the use of a site is specifically designated in the Development Plan, it shall be used only for the purpose so designated. In view of the fact that there is no dispute about the fact that the area is in a residential zone, buildings in such zone cannot be permitted for any purpose other than residential or for the purposes permissible in a residential zone. No building can be used as a shopping/office complex.

###. In the order passed by this Court on 24/08/2000 in Special Civil Application No. 8553 of 2000, a view is taken that in a residential zone, there cannot be any commercial building or offices. In paragraph 19 of the order, the Court observed as under:

"It goes without saying that in a residential zone, the building or part of the building cannot be permitted to use as office complex or for commercial purpose as it is likely to cause nuisance and annoyance to the residents occupying the building and the neighbouring occupiers".

###. Our attention was drawn to the regulations, vide resolution dated 24.8.1984 which was produced on record at page 455. It seems that under the resolution, the State Government approved the regulations known as 'Ahmedabad Urban Development Authority (Disposal of land and other properties) Regulation, 1984 prepared under section 119 of the Development Act. The Regulations are produced on record from page 456 to 464. Clause 3 of the Regulation provides for power to dispose of land and other properties. The maximum period for which a property can be leased is 90 years, for which premium is to be taken or rent is to be determined, or on consideration of both premium and rent, the property can be leased for a maximum period of 90 years. In the instant case, reading regulation 4, it provides that the authority/committee/Chief Executive may dispose of any land and other properties by making offers or accepting offers from the State Government, Government of India, local authority, public section undertaking, Co-Operative Housing Society, Educational Institution, and such other body or Institution as the Authority/Committee may decide.

###. Apart from the fact that the land is not being used by the Society for which it was allotted under the resolution, what is required to be noted is that the authority was permitted to dispose of the land in favour of a Co-Op. Housing Society for a consideration and period indicated in regulation No.3. Regulation itself indicates that the Society must be a 'housing society' and the plot allotted is, therefore, required to be used for providing housing facilities to its members, and not for commercial purpose or for giving on rent or for disposal at huge margins. We have perused the leaflet 'U' and some of the glimpses which we have indicated makes it clear that AUDA decided to allot the land to the Society for the purpose of construction of residential houses, and it can, therefore, be used for the purpose of residence of the allottees only, and not for any other purpose. If sub-clause 3 of Clause 4 of the Regulation is referred, it becomes clear that it is with a laudable object otherwise, there would have been no reference to educational institutions and such other body or institution. Ordinarily, property of a public body is to be disposed of by holding public auction or inviting tenders by public advertisement. However, when representation is made by a Co-Operative Housing Society that its members are badly in need of residential houses and they require to construct residential houses, AUDA takes a decision to allot the land to the Society so that the members of the Society can erect houses for the purpose of residence only. Then plots must be used for erection of residential houses for the members of the Society, otherwise, it would be contrary to the law and object of the regulation. If at all AUDA wanted to earn sizeable amount, it would have disposed of the land by public auction.

###. It is required to be noted that in two cases, the counsel for the plot holders submitted that AUDA has permitted change of use. It is indicated earlier that the highest official's applications were considered by subordinate officers, either by AUDA or by the Registrar of Co-Op. Housing Society, and how they have dealt with, is very clear.

###. Thus, keeping in view the very object of the Act, and keeping in view the facts that the regulations are for general benefit of public and in the instant case, the plots were given at a concessional rate without auction for residential purpose only to a Cooperative Housing Society, the land can be used only for the purpose of residence by its members, and for no other purpose. It is in view of this that AUDA could not have

allowed the use for any other purposes, as otherwise the object would be frustrated. It may be noted that AUDA authorised the use of land without the land being reserved for residential purpose to three persons only. Plots were reserved for the purpose of neighbour hood centre and public housing and could not have been used for any other purpose till there was variation. As indicated earlier, the Government varied the plan only in the year 2000. Therefore, at that point of time when the AUDA allowed the change of user knowingly or unknowingly, AUDA had no power to do so and the subsequent variation will not validate the previous act of the authority, as held by the Apex Court in the case of Dadar Avanti Cooperative Housing Society Limited, Bombay vs. Municipal Corporation of Greater Bombay & Others [(1996) 2 SCC 695]. In the instant case, from the inception, the plot was reserved for neighbour hood centre and public housing and therefore, the plots could not have been used by the Society. Till the year 2000 when the Government sanctioned the variation, AUDA could not have permitted any change of user.

CAN AUDA PERMIT CHANGE OF USER BY COLLECTING FEES :

###. Mr. Panchal learned advocate submitted that for the change of user, AUDA has taken fees from the persons. It is required to be noted that this Court has already held that without authority, the amount cannot be charged or levied. We have also referred to the decision of the Apex Court wherein the Apex Court laid down that without the authority of law, the development authority couldn't levy any fees.

###. It is pointed out in paragraph 7 of the affidavit by Chairman of AUDA that :

" ... policy decision was taken by lessor Ahmedabad Urban Development Authority in its Board meeting No. 163 dtd. 29.1.96 wherein it was resolved by Resolution No. 243 that if property is to be transferred within 5 years, whole of an excess amount after deducting cost price + 12% interest thereupon from the sale price, shall have to be deposited before the Ahmedabad Urban Development Authority. If such premises being transferred between 5 to 10 years, 50% of the excess amount after deducting cost price + 12% interest from sale price, thereupon shall have to be deposited before the Ahmedabad Urban Development Authority. And if property is

to be transferred after 10 years, 10% of the excess amount, after deducting, cost price + 12% interest thereupon from sale price shall have to be deposited before the Ahmedabad Urban Development Authority".

###. This resolution was attacked by Mr. Vakil, learned counsel appearing as amicus curie on the ground that AUDA has no authority whatsoever to pass such a resolution. Reliance is placed on the decision of the Apex Court in the case of AUDA vs. S.J. PASAWALA reported in 1993 (1) GLR 655. We have gone through the decision and it is clear that AUDA has no authority to levy fee. The Court held in the aforesaid decision that imposition of fee by AUDA is unconstitutional. The delegated authority cannot levy a tax or fee without there being any authority for the same under a statute. Reading the copy of the resolution placed on the record by AUDA, it becomes very clear that such a resolution could not have been passed by AUDA. Law does not permit or authorize such transfer and more so on levying fee. Even if for the sake of argument it is presumed that the same is permissible, under what circumstances powers are to be exercised is not referred to in the resolution, and, therefore, powers cannot be exercised arbitrarily by the Chairman of AUDA. In a particular case of extreme necessity or unavoidable circumstances, a person may seek permission for transfer of a leased property, but there cannot, and should not, be a general resolution permitting transfer and/or to convert the same for commercial purpose, more particularly when a property/land is leased for residential purpose. In the present case the property was leased specifically for residential purpose of the members. When persons made application to AUDA that they need plots for residential purposes, AUDA allotted without auction of the plots for residential purposes, prohibiting the transfer, exchange, subletting, mortgage without written permission. There is no question of levying fees. Even assurance was given to the Division Bench in the earlier proceedings that plots are needed by officers for their residential requirements. There is no question of permitting transfer unless there are compelling circumstances. In any case, profiteering cannot be permitted. There is no explanation in the aforesaid resolution indicating the circumstances permitting transfer of the premises. In the absence of any such explanation or guideline, shelter of the resolution cannot be taken.

###. Mr. Vakil, learned Counsel pointed out that for unavoidable circumstances, if there is need for transfer

or re-sale, then in such case, by imposing condition, the Chairman is authorized to permit the transfer. However, the mode adopted is nothing but an arbitrary action. There must be regulations for controlling such transfer. It cannot be left out to the sweet-will of the Chairman of AUDA. However, in the instant case, no such permission has been taken, as pointed out by the Chairman of AUDA. Mr. Vakil, learned Counsel submitted that the Chairman of AUDA is not authorized to collect money in case of transfer and unless and until there is a legislative mandate, he cannot collect any type of taxes or charges from the persons. In absence of any regulation made by the legislature, which is normally found in case of land, the Chairman cannot exercise power arbitrarily.

###. About transfer of premises, at page 57, Chairman of AUDA has stated that in AUDA's Board Meeting No. 163 dated 29.1.1996, by resolution No. 243 it was decided to permit transfer of property as per the conditions stated therein.

###. According to the affidavit, amount was required to be deposited before AUDA. In the instant case, plots were allotted to the Society as a special case for the purpose of residence only. The resolution is passed in 1996. The members have transferred plots before 1996 and even after 1996. In the absence of any provisions of law, AUDA cannot levy fees for transfer. The legislature has not permitted collection of any such levy by AUDA for permitting such transfer. During the course of hearing of this petition, it was repeatedly asked whether there is any legislative sanction behind such action of collection of levy by AUDA, but nothing was placed before us whereby the legislature permitted collection of such levy by AUDA. AUDA is merely an authority for regulating the development, and not authorised to permit the change of use or transfer of plots by charging money.

###. Mr. Vakil, learned counsel pointed out that the transfer is illegal. He submitted that large amount has been collected at the time of permitting transfer, and obviously, a person would pay only if he is earning more than what he is required to pay to AUDA, and unless there is profiteering, there is no question of transfer. It is also clear from the evidence that large amount of rent is being recovered. At least on record there is one certificate pointing out this aspect. The certificate issued by a Chartered Accountant in connection with the property held by Mr. S. Jagadeesan constructed on the

plot which was amalgamated with the plot of Shri M. Sahu, indicates this aspect. That certificate indicates only half of the amalgamated property, i.e. only the share allotted to Mr. S Jagadeesan. Mr. Sahu must be deriving similar income also. Reading the certificate, we are of the opinion that AUDA cannot give permission for commercial use for profiteering. AUDA, on representation, leased the plots for members own use. Before the High Court in earlier proceedings, assurance was given that members need for their residential purpose. It was known to AUDA. Therefore, AUDA could not have permitted the use of the property except for the beneficiary's residence. In urban area land is very scarce. AUDA, is an authority performing its duties under the statute and thought it fit to allot land to Administrative and Police officers of the State through a Co-Op. Housing Society so that there may be equal distribution of land. It is with this idea in mind the persons were required to file an affidavit indicating whether he or any of his family member is a member in any other Co-op. Housing Society or not or he or his family member has any house or plot of land for construction of a house. Thus, with this idea he was required to disclose whether he or his family member held any property or not. This was only with a view to see that a person having no house or having no land for construction of a house is given the plot in a Society. Profiteering cannot be permitted. Ordinarily, for the benefit of public at large, the land was required to be auctioned under the statute, but considering that high ranking officers, occupying high position, require the land for their housing need, the Division Bench thought that it is in public interest more particularly considering the assurance that the land shall be used for their residential purpose only, did not interfere. Not only that, a big plot of land reserved for `neighbourhood centre'/`civic center' was converted to residential use much after allotment in 2000. At the time of allotment it was for a reserved purpose as aforesaid. Under the law, there could be no development for residential purpose unless and until the plots were designated for residential purpose. Of late, in the year 2000, notification was issued in this behalf and therefore development was illegal, unauthorized, without authority of law. AUDA permitted merely because plots were held by officers. In some cases, even did not take any action, for development without approval of plans or contrary to plans or contrary to zoning regulations. AUDA permitted development with open eyes as if there is no rule of law. Thus, the land which was meant for 'public utilities' was converted into residential use. Surprisingly, the

officers who obtained the plot by becoming member of another Society which was never allotted the land, made use of the property for 'commercial purpose'.

###. Clause 2.58 of the General Development Control Regulations of AUDA provided for Neighbourhood & Civic Centre, which reads as under:

"Neighbourhood Centre and Civil Centre shall include following activities such as sectorial shopping centre, market, cinema, small hospital, playground, swimming pool, Town hall, open air theatre, civil and cultural facilities, library, higher secondary school, parking plots, public utility and service buildings such as post office, fire station, police station, religious building and building of public uses."

###. Surprisingly, there is no fire station in the area. AUDA has not placed on record any material to show that the utilities which were required to be provided under the above caption have been provided elsewhere in the vicinity. In the absence of providing such utilities AUDA cannot convert at its sweet will the purpose other than for which the land was reserved. AUDA has not bothered to provide the facilities. If plots would have been auctioned for the purpose indicated, people would not have been deprived what legislature wanted. While preparing the plans, looking to concentration of population, law mandates to provide sufficient and adequate space for development of neighbour hood center or civic center. Despite calling upon AUDA to place on record material to show that similar area has been put to use for such centres, no material is placed. Large area has been diverted for use other than neighbourhood center or civic purpose merely because the IAS/IPS officers selected the site. If the correspondence is perused, it becomes clear that Society demanded area reserved for such centres. It is a sorry state of affairs that people living in that area are deprived of such centres, merely because influential people wanted these plots in the name of their own residence.

###. The question now before the Court is: where public bodies, under colourable exercise of powers recovers money from a selected class of the society without authority of law, which is later found to be an erroneous levy, should the amount be returned to the persons?

###. The Supreme Court, in the case of SHIV SHANKAR DAL MILLS vs. STATE OF HARYANA reported in AIR 1980 SC 1037 held that Article 226 grants an extra ordinary remedy which is essentially discretionary, although founded on legal injury. It is perfectly open for the court, exercising this flexible power, to pass such order as public interest dictates and equity projects. It is further pointed out that where public bodies, under colour of public laws, recover people's money, later discovered to be erroneous levies, the dharma of the situation admits of no equivocation; There is no law of limitation, especially for public bodies, on the virtue of returning what was wrongly recovered to whom it belongs; Nor is it palatable to our jurisprudence to turn down the prayer for high prerogative writs, on the negative plea of 'alternative remedy' since the root principles of law married to justice, is ubi jus ibi remedium.

###. AUDA has filed various affidavits in this matter. In the affidavit filed by Mr. Surendra M. Patel, Chairman of AUDA, has stated in paragraph 8 - running page 59- that Mr. C.J. Jose applied for transfer of ground floor and basement for use of Bank and accordingly as per Resolution No. 243 AUDA gave permission for transfer of the same. The Chairman has forgotten that, vide Annexure-1, while allotting the plots in view of resolution dated 19.1.1990, a specific condition was put that after variation of the plans development permission will be granted and till then, no such development will be permissible. This communication is found in letter dated 7th March 1990 at page 67. Again, on 1st August 1990, Secretary was reminded by AUDA that conditions mentioned in letter dated 1st March 1990 referred to hereinabove will have to be strictly complied with. In the affidavit dated 13.11.2000, Chairman has nowhere stated that variation was sanctioned by the Government before passing the plans. Despite this, AUDA has not only allowed the development of 18 plots, but has permitted change of use in two cases, which is found in paragraph No.9 of the affidavit of the Chairman. It is further stated that 5 plot holders have taken part permission for change of use. Thus, AUDA itself has permitted development of plots contrary to GDCR and Development Act and the conditions of allotment of the land. This is a case where executive officers and executive authorities of AUDA put the legislation aside, without bothering about the Judgment indicating allotment for residential use only, permitted development contrary to law.

###. So far as the three plots are concerned which are reflected in paragraph 12 of the affidavit of the Chairman of AUDA, AUDA has disclosed its inability as it had no detail about its occupants whether they are original owners or transferees or tenants since they have not obtained permission of AUDA. Reading this paragraph, it is clear that in the plots No. 9, 10 and 11, flats are constructed without permission of AUDA but it is surprising that AUDA has not taken any action. It is only after the Court issued notice, AUDA all of a sudden issued individual notices to the Chairman of the respondent No.4 Society and owners/occupiers of the flats on or about 2.11.2000 because there is unauthorized usage of the premises and unauthorized transfer of the premises. Thus, it is the case of AUDA itself that there is unauthorized usage of the premises and unauthorized transfer of the premises.

###. AUDA could not have permitted the transfer even by charging, and even it was not within its competence. Despite the judgment delivered by the Supreme Court in the case of AUDA itself, this illegality has been committed. Therefore, such transfers are bad. Therefore, the defence taken by the plot holders to the extent that AUDA has taken fees cannot be accepted.

###. Section 49 of the Development Act puts restriction on development of the land after declaration of Scheme. If the property is to be put to a different use than what is indicated in the declaration, then unless the scheme is varied the property cannot be put to a different use. In the instant case, there is a clear breach of this provision.

PERMISSIBILITY OF VARIATION OF LAND RESERVED FOR PUBLIC PURPOSE:

###. Our attention was drawn to the amended clause (jj) of section 40 of the Development Act. The said provision was inserted by Gujarat Act No.2 of 1999. It was pointed out to us that section 40(3)(jj)(iii) of the Development Act provides that a TP Scheme may make provision for allotment of the land from the total area covered under the scheme to the extent of (i). fifteen per cent for roads, (ii), five per cent for parks, play grounds, gardens and open space, (iii). five per cent for social infrastructure such as school, dispensary, fire brigade, public utility place as earmarked in the Draft Town Planning Scheme, and (iv). fifteen percent for sale by appropriate authority for residential, commercial or industrial use depending upon the nature of the

development. Sub clause (b) of the aforesaid section provides that the proceeds from the sale of land referred to in para (iv) of sub-clause (a) shall be used for the purpose of providing infrastructural facilities. Sub-clause (c) provides that the land allotted for the purposes referred to in paragraphs (ii) and (iii) of sub-clause (a) shall not be changed by variation of the scheme for the purposes other than public purposes.

###. Mr. Vakil relying on the above sections, submitted that the plot meant for public housing (which was reserved for common people) and neighbourhood centre cannot be used for the purpose of sale for residential. AUDA could have disposed other lands by sale which was reserved in view of sec. 40 (3)(jj)(a)(iv) which provides for 15% sale by appropriate authority depending upon the nature of development. It further casts duty on AUDA to keep the proceeds from the sale of land referred to in para (iv) of sub-clause (a) to be used for the purpose of providing infrastructural facilities.

###. Mr. Vakil, learned counsel submitted that therefore in the TP Scheme the provisions for neighbourhood center and public housing could not have been changed for any purpose other than the aforesaid purpose even after 1999. Before 1999, there was no question of allotment of more than 10% of the land for the purpose of sale. Hence he has submitted that the sanction given by the Government to vary the scheme is contrary to the provisions of the Act.

###. We have examined this aspect because earlier by suppressing the material facts and by fraud, the case was presented before the Court and true facts were not placed before the Court.

ZONE CHANGE - SHELTER OF COURT PROCEEDINGS TO JUSTIFY :

###. Shri Bharat Rawal has filed another affidavit on 6.12.2000. At paragraph 2 page 554, he has stated as under:

> "I say that the land bearing F.P. No. 694, 695 and 696 was allotted to the Sumangalam Co.Op. Housing Society in year 1989 after taking the legal opinion for allotment of the land to the society and possession of the land was handed

over to the society on 1.6.90."

###. He has also referred to the earlier proceedings and he has stated thereafter (page 554) that:

"The decision given by the Hon'ble Court was unconditional, otherwise the court would not has (sic) allowed any Residential Development in the Neighbourhood Center plot/land."

###. In paragraph 3 of the affidavit, Mr. Rawal has stated that, AUDA took a decision to change the purpose from 'neighbourhood center" to "sale for residential" purpose and ultimately, the Government sanctioned the variation only on 29/6/2000 [page 623-625]. The tenor of this paragraph is that AUDA recommended to change the purpose to honour the decision of High Court under the pretext that decision of the Court was unconditional as otherwise the Court would not have allowed any residential development in the plot reserved for neighbourhood centre plot/land. We cannot, and we do not, appreciate the taste in which it is projected that they have taken the action to de-reserve the land "to honour" the decision of the High Court more particular in view of the fact that we have observed hereinabove that there was gross suppression of material and important facts from the Court and therefore that order cannot be relied upon. Not only that, but it was known to AUDA as well as the Government about illegalities in allotment as at the hands of the State inquiry commenced much earlier and there was preliminary finding. Even the Government asked AUDA to take action, but unfortunately, no action has been taken.

###. In paragraph 4 he has stated that there is no further need to continue "neighbourhood Center" reservation in the principal scheme since the facilities mentioned above is of the nature of neighbourhood center were in existence and hence authority passed resolution to vary the scheme for questionable land. Except mere averments, no evidence is produced on record by the deponent. At this juncture, it would be worthwhile to quote the following note from the re-distribution and valuation statement found at page 620 of this bunch:

"NOTE. Final plots allotted to the Appropriate Authority for Civic Centre / Neighbour Centre shall be utilised for school, play ground, dispensary, health centre, library, community

hall, garden, local shopping, bus station, post office and public purposes of all kinds".

###. Further, reading the remark column of the said statement, it is clear that so far as neighbourhood centre is concerned, it provides that "20% beneficial to the owners or residents within area of the scheme and 80% to the general public", and so far as 'public housing' is concerned, it provides for "5% beneficial to the owners or residents within area of the scheme and 95% to the general public."

###. A combined reading of the remarks and notes makes it absolutely clear that the essence of course is 'public purposes'. It is required to be noted that there is no children park in the vicinity. Another ingredient of neighbourhood centre is "shopping center" and "commercial center". Such facilities to fall within the spectrum of "neighbourhood centre" [for use by public at large at the instance of public authorities], is not in the vicinity and if there are certain shops owned by some private persons in the vicinity, it is highly unfair for a public authority like AUDA to come forward and say that such shops fall within the ambit of neighbourhood centre for which the plot was reserved in the principal scheme. AUDA neglected to provide facilities such as shopping centre, health centre and other facilities within the meaning of neighbourhood centre or civic centre and simultaneously permitted development contrary to regulations, as a result of which almost in every high rise building, instead of parking facilities, shopping centre came in existence. At the relevant time, i.e., 1987 or 1990, facilities to be provided by AUDA in those centres were available or not is not stated. No evidence is produced to show that such facilities were available. It is a lame excuse. Even assuming that there are some such private shops in the vicinity now, this was not the state of affairs when AUDA allotted the land to the Society. One thing is clear that AUDA has not provided any such facilities required in a neighbour hood centre, and in such situation, AUDA could not have requested the Government to make variation in the TP Scheme. It is the duty of AUDA to see that adequate facilities which are required to be provided are provided and the facilities cannot be taken away at the cost of others. For the facilities of a special class of people, the public at large cannot be deprived of the facilities of "neighbourhood centre" and "civic centre", and even as on today, there is no facility in the vicinity which can be stated to be "neighbourhood centre" in the spirit of the provisions of the Development Regulations. Therefore,

AUDA is not justified in stating that the facilities are in existence, and hence a decision was taken to vary the scheme. Such a stand would have been acceptable provided such facilities are provided nearby where it is convenient for the public at large. AUDA could not have shirked from its responsibilities and tried to justify its position after having first allotted the land for purposes other than for what it is reserved.

###. In absence of variation at the relevant time, permission for development for the use of land for the purpose other than prescribed, is illegal contrary to law.

###. About neighbourhood centre, Mr. Vakil pointed out that the decision for purpose of variation was taken by the State Government on 29.6.2000. Shri Bharat Raval, on behalf of AUDA in his affidavit dated 27/12/2000 [Pages 611 to 625 with Annexures] has pointed out that Final Plot Nos. 694 and 696 were for public housing while Final Plot No. 695 was for the purpose of neighbourhood centre. On 29/06/2000, as stated in the affidavit, Notification was published and the scheme was varied. All the aforesaid three plots were shown for sale for residence. Plots No. 694, 695 and 696 were shown as plots for sale for residence and it was first varied plan, while as per original plan plots No. 694 and 696 were reserved for public housing and plot no. 695 was reserved for neighbourhood centre. After the lease and subsequently unauthorised/illegal transaction by way of sale, etc. transferring the properties, after a long period a decision was taken by the State Government to permit AUDA to sell the plot for residence. In fact, the property passed much earlier. Thus, for giving benefit to the high ranking officers, after lease deed came to be executed, development permission granted in gross violation and buildings are allowed to be erected in gross violation and, thereafter, TP Scheme was varied.

###. There is a specific admission in paragraph 3 of this affidavit that the draft TP Scheme was sanctioned by the Government on 29.6.2000 only. Before that date, the varied scheme was not sanctioned by the Government, and, therefore, AUDA was not competent to grant any development permission. At page 560, AUDA has given details about 18 developed plots. However, though it is stated that the plans are annexed from pages 1 to 64, the same have not been annexed. Anyhow, the fact remains that AUDA has granted development permission and has allowed development or use contrary to the provision of law [see affidavit - Page 59]. At page 582, there is a

clear decision that development permission can be granted by AUDA only after the Government approves the varied TP Scheme. In view of the fact that the Government approved the variation in the scheme only on 29.6.2000, AUDA could not have granted development permission for any type of activities except for neighbourhood/civic centre on the plot reserved for neighbourhood centre. Hence, the development permission granted by AUDA is contrary to law. Merely because subsequently the scheme was varied, the earlier action would not become legal. It is not open to take a shelter that subsequently the scheme has been approved by the Government. What is relevant to consider is, whether AUDA could have granted development permission at the relevant time when the varied scheme was not approved by the Government. The answer is: No.

###. In Special Civil Application No. 1647 of 1991, the Court considered the question as to whether purpose can be changed regarding Final Plot No. 250 in Town Planning Scheme No. 26 [Vasna-North] admeasuring 2191 sq.mtrs. reserved for health centre and Final Plot No. 276 admeasuring 4563 sq.mtrs. reserved for social & civil centre - 50% beneficial of the scheme area and 50% beneficial of the general public. This Court [Coram : G.N. Ray, CJ & C.K.Thakker, J, as they were then] by a lengthy judgment, delivered on 19.08.1991, held that the plots reserved for the purpose of health centre and social centre cannot be changed. The Court also relied on the Apex Court's decision in the case of Banglore Medical Trust vs. B.S.Muddappa & Others [JT 1991(3) SC 172] and observed that in the said decision, it has been held that utilisation of the plot in question reserved by the Banglore Development Authority for providing park cannot be utilised for construction of hospital. In paragraph 48 of the judgment, it has been held that:

" xxx Even if it is assumed that the definition of amenity being inclusive it should be given a wider meaning so as to include hospital added in clause 2(bb) as a civil amenity with effect from 1984 a private nursing home unlike a hospital run by Govt. or local authority did not satisfy that characteristic which was necessary in the absence of which it could not be held to be amenity or civil amenity. In any case a private nursing home could not be considered to be an improvement in the scheme and, therefore, the power under Section 19(4) could not have been exercised."

###. It is also required to be noted that as pointed out by AUDA, the plots were reserved for public housing and neighbourhood center. Section 12 of the Development Act refers to contents of draft development plan. Reading subclause (e) of subsection 2 of Section 12, it is clear that the land is to be reserved for public purpose. So far as residential, industrial, commercial, agricultural and recreational purposes are concerned, provisions are made in subclause (a) of subsection 2 of Section 12. Thus, both are operating in different fields. The word "Public Housing" itself clearly indicates that two plots were provided for the benefit of public at large so that the middle class and downtrodden class can get facility of public housing. Neighbourhood centre was provided for the purpose of establishment of market and such other common facilities. These facilities are not provided and valuable plots have been given to a special class, which indicates nothing but a special favour and rather important aspect is that at the same time, they are also given plots at Gandhinagar at a concessional rate and these members have taken possession of the plots though the plots were not allotted to the society registered at Ahmedabad [Bodakdev]. Therefore, this high handed action is required to be interfered with.

###. On record, at page 618, redistribution and valuation statement is produced. Item No. 6 refers to neighbourhood centre [Plot No. 695, Area Admeasuring 12516 sq.mtrs.]. Item No. 8 refers to public housing [Plot No. 694, Area Admeasuring 2739 sq.mtrs.]. Item No. 9 refers to public housing [Plot No. 696, Area Admeasuring 5239 sq.mtrs.]. The notes, at page 620, makes it very clear that Final Plots allotted to the appropriate authority for civic centre / neighbourhood center shall be utilised for school play ground, dispensary, health centre, library, community hall, garden, local shopping, bus-station, post office and public purpose of all kinds. The scheme was sanctioned, for which there is endorsement on page 621. The signatories are the Chief Town Planner and the Officer on Special Duty & Joint Secretary to the Government of Gujarat, Urban Development and Urban Housing Department. By notification dated 29/06/2000, which is produced at pages 623 to 624, it is submitted that the said plots are now kept for sale for residence. After the plots are already transferred what is the purpose in stating that the said plots are for sale for residence. But one thing remains that the plots were not meant for sale and were meant for public housing and neighbourhood center and, therefore, there could not be transfer of the plots under a lease deed to the society registered at Ahmedabad

[Bodakdev]. AUDA could not have executed the document of lease in the year 1995 or soon after the decision, as at the relevant time it was not permissible to use the plots for residence. The plots could not have been utilised for the purposes other than public housing and neighbourhood center without variation being made in the scheme.

###. AUDA was aware that the plots were allotted for the purpose of residential purpose only. The Division Bench also specifically pointed out that aspect. As pointed out in the affidavit by the Chairman, that it is this authority, which has permitted the use of the building for other than the residential use and thus, permitted the members to use the plots for the purpose other than the residential. In paragraph 9 [page 59], the Chairman has pointed out that eight premises are being used against permission granted by AUDA, which are at Serial Nos. 1, 3, 4, 5, 6, 7, 8 and 12. [Annexure-III]. Only two premises, which are at Serial Nos. 1 & 3 have taken permission for change of use while Serial Nos. 4, 5, 7, 8 and 12 have taken part permission for change of use whereas on site more areas have been put for use against sanctioned use. So far as building use permission is concerned, except Serial Nos. 1, 2 and 3, no permission has been granted and from the affidavit, it is clear that only after initiation of proceedings, individual notices have been issued to the Chairman of the Society as well as the owners of the premises.

###. The Chairman has pointed out in paragraph - 14 [page 62] that the society made application with 77 members, but they have divided the plots between 54 members. Despite the request being made as pointed out by the Chairman of AUDA, the society in question has not supplied the list. Therefore, AUDA is not in a position to state that whether there is transfer of premises from the original members or not. According to the Chairman, except Mr. C.J.Jose, nobody has obtained permission. At page 65 of the affidavit, the Chairman has pointed out that out of 54 subplots, 27 subplots have been allotted to the original members whereas 27 plots were allotted to new persons, for which neither any permission has been taken nor any information has been given to the authority, except vide letter dated 03/11/2000. Thus, this society has acted in such a way that even AUDA is not aware about the allotment of plots to others. This speaks a lot about use of public property given at a throw away price.

###. So far as permission to erect the building is

concerned, it is required to be noted that in different years, permissions were granted to some of the plot-holders for carrying out construction, that is also clear from pages 98 to 101. Thus, it is clear that, to some of the plot-holders, permission was not granted and even though construction has been carried out. AUDA has also pointed out that for breach, notices have been issued to some of the plot-holders. Various irregularities have been pointed out in the affidavit filed by the Chairman of AUDA [Page 51 onwards]. Thus, it is clear that in violation of building regulations, buildings have been erected on some of the plots. It is also clear that AUDA could not have granted permission because at the relevant time, the plots were reserved for public housing and neighbourhood centre.

DEVELOPMENT PERMISSION BEFORE SANCTION OF VARIATION:

###. So far as allotment of the land is concerned, it was made clear vide letter dated 01/03/1990 [Page-67] that Final Plot No. 695 is allotted for neighbourhood center and permission for development will be granted only after variation is sanctioned. At pages 98 to 101, it is indicated that there was development on Final Plot No. 695 much before the variation was made in the scheme. At page 623, notification dated 29/06/2000 is produced on record whereby variation was made in Final Plot Nos. 694, 695 and 696. Therefore, it is clear that the buildings could not have been erected till the variation was made by the State Government.

###. However, with a view to actively assist the high officials, even AUDA has acted high handedly in contravention of all the provisions of law. It is required to be noted that variation does not validate any permission granted earlier.

###. In the case of Dadar Avanti Cooperative Housing Society Limited, Bombay vs. Municipal Corporation of Greater Bombay & Others [(1996) 2 SCC 695] (supra), the Apex Court pointed out that `a building or a part of a building if it has been sanctioned for a specific purpose, user of the same for any other purpose unless permitted by the Competent Authority, would be in contravention of the provisions of the Act. In the case before the Apex Court, when application for change of use was made under the regulation in force, it was not permissible for allowing change of user from residential to commercial though at a later point of time the regulation has been changed and such permission can be accorded subject to certain terms and conditions which

includes the requirement of making an independent access to the building. The Apex Court pointed out that the Development Control Regulation for Greater Bombay, 1991 which came into force with effect from 25/03/1991 cannot be pressed into service for deciding the legality of the order of the Additional Commissioner dated 18/12/1997.'

###. In view of this, it is clear that the property could not be used for any other purpose than the neighbourhood center. Therefore, in the instant case, it is very clear that use of the building is contrary to the provisions contained in the Act and Rules.

###. Section 52 of the Development Act refers to contents of preliminary and final scheme. Subsection (3) of Section 52 is relevant here, which reads as under:

Section 52. Contents of preliminary and final scheme.

(1) xxx xxx xxx

(2) xxx xxx xxx

(3) In the final scheme, the Town Planning Officer shall,-

(i) fix the difference between the total of the values of the original plots and the total of the values of the plots included in the scheme in accordance with the provisions of clause (f) of sub-section (1) of section 77;

(ii) determine whether the areas used, allotted or reserved for a public purpose or purposes of the appropriate authority are beneficial wholly or partly to the owner or residents within the area of the scheme;

(iii) estimate the portion of the sums payable as compensation on each plot used, allotted or reserved for a public purpose or for the purpose of the appropriate authority which is beneficial partly to the owners of residents within the area of the scheme and partly to the general public, which shall be included in the costs of the scheme;

(iv) calculate the construction to be levied under sub-section (1) of section 19, on each plot

used, allotted or reserved for a public purpose or for the purpose or the appropriate authority which is beneficial party to the owners or residents within the area of the scheme and partly to the general public;

(v) determine the amount of exemption, if any, from the payment of contribution that may be granted in respect of plots exclusively occupied for religious or charitable purpose;

(vi) estimate the increment to accrue in respect of each plot included in the scheme in accordance with the provisions of section 78;

(vii) calculate the proportion of the contribution to be levied on each plot in the final scheme to the increment estimated to accrue in respect of such plot under sub-section (1) of section 79;

(viii) calculate the contribution to be levied on each plot included in the final scheme;

(ix) determine the amount to be deducted from, or added to, as the case may be, the contribution leviable from a person in accordance with the provisions of section 79;

(x) estimate with reference to claims made before him, after notice has been given by him in the prescribed manner and in the prescribed form, the compensation to be paid to the owner of any property or right injuriously affected by making of the town planning scheme in accordance with the provisions of section 82;

(xi) draw in the prescribed form the preliminary and the final scheme in accordance with the draft scheme:

Provided that the Town Planning Officer may make variation from the draft scheme, but not such variation, if it is of a substantial nature, shall be made except with the previous sanction of the State Government, and except after hearing the appropriate authority and any owners who may raise objections.

###. Section 77 of the Development Act pertains to costs of scheme. Section 77(c) refers to all sum payable as

compensation for land reserved or designated for any public purpose or for the purposes of the appropriate authority which is solely beneficial to the owners of land or residents within the area of the scheme. When the costs of the town planning scheme is to be drawn, plots reserved for public purpose or designated for public purpose are included in the costs and thus, it will be divided between others. Every one will have to pay contribution. If the plots are reserved and public has paid costs for the same, it cannot be given to anyone at a throw away price as public at large will not be benefitted by sale of such plots. The costs will be changed if in original scheme the plots were not reserved for public housing and neighbourhood center. Section 79 of the Development Act refers to contribution towards costs of scheme. Reading the said section, it is very clear that the costs of the scheme shall be met wholly or in part by contribution to be levied by the appropriate authority on each plot included in the final scheme calculated in proportion to the increment which is estimated to accrue in respect of such plot by the Town Planning Officer. Sub-section (2) of Section 79 of the Development Act points out that the owner of each plot included in the final scheme shall be primarily liable for the payment of the contribution leviable in respect of such plot.

###. Mr. Vakil, learned Counsel appearing in the matter as an amicus curiae pointed out that AUDA has not at all considered about these aspects. How the contribution is calculated is the question, which is not answered. Variation will change financial calculation. Our attention was drawn to a note at page 620, which is a redistribution and valuation statement. It is specifically pointed out that Final Plots allotted to the appropriate authority for civic centre / neighbourhood center shall be utilised for school play ground, dispensary, health centre, library, community hall, garden, local shopping, bus-station, post office and public purpose of all kinds.

###. It is required to be noted that once the land reserved for neighbourhood centre was allotted to the society, then the society becomes beneficiary. When the plot reserved for neighbourhood center is allotted to a special class, how the people at large will be benefitted is not at all explained by AUDA. AUDA has acted knowing full well that the land required for neighbourhood center is being leased to a party for a different purpose. So far as Final Plot No. 695 is concerned, change of use was not permissible. For the reasons best known to the

parties, they have changed the purpose. It was also known to the Government that the plots have been allotted to the society which in turn, allotted to its members. When in the year 2000, the State Government issued notification, the Government was aware that almost all the members have been allotted the plots at Gandhinagar at a concessional rate and yet, knowing full well that in the country, poor people are not provided place for residence or hawkers are not provided place for selling commodities, as a result of which we find that there is encroachment on public streets, yet, the authority handed over the plots for a different purpose other than the purpose intended. It is nothing but an attempt to legalise the illegal act, as submitted by the learned counsel, Mr. Vakil. It was further submitted that transfer of plots for residence is not a public purpose, but with a view to favour some IAS-IPS officers. AUDA as well as the State Government have acted contrary to law and it cannot be said that the act is in the interest of public or the act would serve the public purpose. Variation is made knowing full well that the land is allotted to the society much earlier, which clearly indicates that in order to legalise the illegal act, variation has been made, as submitted by the learned counsel, Mr. Vakil. On behalf of AUDA, it was not pointed out that there is provision that the land reserved for a purpose can be transferred or can be used for other purpose. Neighbourhood centre was provided for benefit of nearby people and that benefit is taken away at the cost of people for the benefit of few favourites. Had AUDA provided neighbourhood centre elsewhere, situation would have been different. With vehemence, it was submitted that only for public purpose, variation can be made and not for the benefit of few individuals. As stated earlier, the members of the society obtained possession of the land at Ahmedabad as well at Gandhinagar. The society, namely respondent no.4 was not allotted the plots, but on account of similarity in name, it took possession. The members carried out construction illegally and yet to protect them, variation is made in the scheme. Therefore, it was submitted by Mr. Vakil that with a view to favour few officers, benefits are extended.

###. Our attention was drawn to a reported decision in case of M.I.Builders Private Limited vs. Radhey Shyam Sahu & Others [(1999) 6 SCC 464]. The Apex Court pointed out that when there is unauthorized or illegal construction, Court can order demolition of such construction even though builder invested considerable amount. In the said decision, the Apex Court considered

the question of public accountability. In paragraph - 74 of the Judgement, the Court observed as under:

> "..... As a mater of fact the Mahapalika itself filed appeals against the impugned judgement of the High Court. Perhaps that gave hope to the builder to go ahead with the construction and to take the risk of getting the construction demolished and restoring the park to its original condition at its own cost. The builder did not foresee the change in stand not only of the Mahapalika but also of the State Government. It also, as it would appear, overrated its capacity to manage with the State Government to change the land use of the park. The builder is not an innocent player in this murky deal when it was able to get the resolutions of the Mahapalika in its favour and the impugned agreement executed. Now, construction of shops will bring in more congestion and with that the area will get more polluted. Any commercial activity now in this unauthorized construction will put additional burden on the locality. The primary concern of the Court is to eliminate the negative impact the underground shopping complex will have on the environmental conditions in the area and the congestion that will aggravate on account of increased traffic and people visiting the complex. There is no alternative to this except to dismantle the whole structure and restore the park to its original condition leaving a portion constructed for parking. We are aware that it may not be possible to restore the park fully to its original condition as many trees have been chopped off and it will take years for the trees now to be planted to grow. But a beginning has to be made."

###. In the instant case, at the cost of repetition, it is required to be noted that the Respondent No. 2 society registered at Gandhinagar was allotted the plots by AUDA. However, subsequently, the Respondent No.4 society registered at Ahmedabad [Bodakdev] took the possession of the land and it has never disclosed this fact before the Court. In earlier proceedings, it was not stated before the Court that which society was allotted the plots. Lease in this case is nothing but a fraud. Lease was executed in the year 1995. How the construction could have been permitted in the year

1991-92 or before 1995. How the permission could have been granted before the lease deed came to be executed. There can be no lease in favour of the members of Respondent No. 4 society registered at Ahmedabad [Bodakdev], but it can be only in favour of the members of Respondent No.2 society registered at Gandhinagar, as that was the society which made an application. The allotment is a fraud. The plots meant for public housing and neighbourhood centre could not have been allotted for gain. Granting of BU permission to two [only two] is contrary to the building regulations, as applicable at the relevant time and the Government with open eyes varied the scheme keeping all the norms aside. There is not only illegal construction but change of use, which is also contrary to the building regulations and the condition with which plots were allotted, namely residence only. Illegality is permitted by charging some transfer fees in some cases, therefore, it is nothing but to close eyes and to permit the wrongdoers to use the property for commercial purpose or for the purpose for which, the plots were not granted.

###. It is required to be noted that the primary concern of the cooperative society is to erect house and as per the permission granted under the ULC Act, the land was to be used for the purpose of residence only and as per judgment by members only and none else. But, the powerful bureaucrats, who were members of the society by virtue their power and position, managed to get the land and even government and AUDA, knowing illegal acts, varied the scheme. As a matter of fact, it was expected that public functionaries should act in accordance with law. In the instant case, the public authorities have acted in favour of the officers regardless whether other public functionaries were working in accordance with law or not. It is also surprising to note that for one or other reasons, all the Governments inquiries were defeated as the officers could not complete the inquires. Mr. Vakil, learned counsel submitted that there should be no escape with the same immunity in a judicial process. It was submitted that illegalities are perpetuated by the powerful section, namely, Executive Officers of the Government. There is manipulation, not only with the State authorities, but defeating all the inquiries at Government level, it came throughout successfully. Mr. Vakil submitted that justice in a case like this must be done at the earliest.

###. The Chairman has pointed out that there are 34 open plots. So far as construction is concerned, he has pointed out that on 17 plots, there are existing

buildings while, construction is in progress in 3 plots. Thus, it is clear that though the demand was for residence at Ahmedabad, these persons have not erected the houses and the plots are kept open. He has pointed out that without obtaining prior permission of lessor, the plots have been transferred and it is very difficult to lessor to get back the possession of the premises. The Chairman has come out with the case that the decision was taken to permit the transfer of plots by charging interest thereon. Under what provisions of law, this was done is not stated by him. We have indicated earlier that AUDA can charge for transfer, provided it is permissible under the provisions of law or rules, but nothing has been stated and no provision of law is indicated. Mr. C.J.Jose, carried out construction not for his residence but for the purpose of bank, safe deposit vault, hall etc. and second floor for residence. It is stated by him in the annexure that BU permission for third floor was not obtained and change of user has been granted for first floor only. In paragraph - 9 of the affidavit of the Chairman of AUDA, it is stated that 8 premises are being used against permission granted by AUDA. It is also pointed out that for 5 premises, permission has been taken for change of use in part whereas on site more areas have been put for use against sanction use. So far as BU permission is concerned, in paragraph - 10, it is specifically stated that only three premises have been granted permission for building use whereas rest of the premises have not taken BU permission. On three plots, instead of residential houses by the members, flats have been constricted and it is surprising that no details are available with AUDA about occupants whether they are original owners, transferees or tenants since they have not obtained any permission from AUDA. In paragraph 13, it is pointed out that there is unauthorized transfer of premises and notices have been issued to the Chairman as well as individual owners of the premises and/or occupiers of the premises.

###. The learned Counsel for the society fairly stated that no approval was granted by the society for transfer. In fact, all the transfers are without approval of the Respondent No.4. No resolution has been passed by the society. In the absence of transfer of share, purchaser would not acquire any right and in view of this admitted fact, there is a clear breach of bye-laws and conditions of the lease. The Chairman and the Secretary of the cooperative society have failed in discharging their duties. Under the bye laws of a Cooperative Society under the Cooperative Societies Act, the plots were to be

used for the residential purpose for the members only. With a laudable object of providing private houses to the people who are not having land for their own residence in the city, provisions are made. The Cooperative Societies Act makes a special provision under the bye-laws and has put stringent conditions. In the instant case, we find that the breach is committed everywhere and the object of the forming society is, thus, frustrated. The society was formed for the purpose of obtaining residential accommodation. The moment without permission of the society, there is erection of a building contrary to the object of the society, contrary to the purpose for which the land was allotted, the object would be frustrated. In the instant case, it has happened so. It was stated by the respondent no. 4 society, namely the society registered at Ahmedabad [Bodakdev] that the society has not approved any plan submitted before the authorities concerned.

###. The Chairman of AUDA addressed a letter as sated in the affidavit at page 63 calling upon the society for furnishing information and only thereafter, some details were furnished. However, exact list was not supplied to the authority and, therefore, AUDA is not in a position to supply details about transfer of premises from original owners to new occupants. He has categorically stated at page 64 that Mr. C.J.Jose has obtained permission and except him, none has obtained permission for transfer of premises. The Chairman of AUDA at page 65 has pointed out that out of total 54 plots, 27 subplots have been allotted to the original members whereas rest of 27 plots have been allotted to the new persons, for which neither any permission has been taken nor any information has been given to AUDA, except letter dated 03/11/2000 to indicate the list of members. It is also revealed during the hearing that many have transferred their plots or premises.

###. For the breaches, it was open for AUDA to cancel the lease. Clause-18 of the Lease [page-45] gives absolute right to resume possession in case of breach of any condition noticed by the lessor. When the Chairman of AUDA has filed affidavit, he was aware about breaches committed by allottees, who are IAS-IPS and yet, he has not taken any action. That speaks a lot about the functioning of AUDA. From the affidavit of the Chairman, it is clear that contrary to the building regulations, construction has been carried out and transfer has been made and yet, he has not taken any action. Why he has not taken action, has not been explained at all. Condition No. 19 of the Lease Deed [page-45] refers to

cancellation of allotment and lease. If there is violation by the lessee of any of the provisions of the deed or terms and conditions laid down in the prospectus or as may be specified from time to time.

###. Our attention was drawn to the provisions contained in sub-section (xxiv) of section 2 of the Gujarat Town Planning and Urban Development Act where the word 'residence' is defined. Our attention was also drawn to section 5 which provides for Constitution of area development authority. Sub-clause (i) of sub-section 8 of section 5 provides that an Area Development Authority shall meet at such time and place as the "Chairman may determine and subject to the provisions of this sub-section may make regulations for regulating the procedure and conduct of its business at its meetings. Sub-section (iii) provides that all questions at a meeting of the area development authority shall be decided by a majority of votes of the members present and voting and in the case of equality of votes, the person presiding shall have a casting vote. Sub-section 10 provides that subject to the provisions of section 104, an area development authority may appoint such officers and other employees as it considers necessary for the efficient performance of its functions under this Act. Sub-section (11) provides that the officers and employees appointed under sub-section (10) shall be entitled to receive such salaries or allowance and shall be governed by such terms and conditions of service, as may be determined by the State Government. Sub-section (12) provides that the member Secretary of the area development authority and the officers and employees of that authority shall work under the supervision and control of its Chairman. Thus, it is clear that there is indirect control of the Government, and there is direct control of the Chairman of AUDA. Section 7 of the Act refers to powers and functions of area development authority. Sub-clause 1 (iv) of section 7 makes is very clear that the power and function of an area development authority is to control the development activities in accordance with the development plan in the development area. Section 104 of the Act refers to power of State Government to appoint its employees to any office or post under appropriate authority. In view of this section, it shall be open for the State Government to appoint any employee of the State Government to any office or post under an authority. Section 118 provides for power of the Government to make rules. For the items mentioned in this section, the State Government is authorised to make rules to carry out the purpose of this Act. Section 119 of the Act provides that the appropriate authority, with

the previous approval of the State, make regulations consistent with this Act and the rules made thereunder. Thus it is clear that the regulations which are made must be consistent with the Act and the rules to carry out the performance of the development plan and the TP Scheme and to regulate its procedure and conduct of business. Thus, powers which are under the Regulations, can only be exercised.

###. It would be worthwhile to mention here again that in the Final Town Planning Scheme, plot Nos. 694 and 695 are reserved for public Housing while plot No. 696 is reserved for District Neighbourhood Center. Before disposal of the land in question in favour of the Society, neither tenders were invited nor offers were called for nor public auction was held. Even in the earlier petition, the Court specifically held that "looking to the evidence on record, there is nothing to show that the land will be used for commercial purpose or construction of super market". As stated above, the General Development Control Regulations of AUDA provided for Neighbourhood & Civic Centre, which includes sectorial shopping centre, market, cinema, small hospital, playground, swimming pool, Town hall, open air theatre, civil and cultural facilities, library, higher secondary school, parking plots, public utility and service buildings such as post office, fire station, police station, religious building and building of public uses. Reading page 574 it appears that the matter was discussed at the Board Meeting of AUDA. It appears that a decision was taken that as the plot for neighbourhood centre cannot be allotted for residential purpose, and after taking into consideration the opinion of Chief Executive Engineer it was decided to cancel the allotment of neighbourhood centre land. Reading the resolution it further appears that it was discussed in the Board Meeting that the plots cannot be used for any other purpose. AUDA seems to have changed the view that the facilities of neighbourhood centre already exists and therefore there is no need to reserve this land for this purpose (see 555); AUDA also was of the view that the plot reserved for neighbourhood centre cannot be used for any other purpose (page 574) and therefore, the allotment was cancelled. Again, in the next meeting they change their view and allotted the land.

###. One has to remember that in our country, people are not having sufficient means to earn their livelihood. It is for this reason they cannot afford to go to elite shops and markets of private ownership, and it is for this reason that the legislature provides for

neighbourhood centers so that common people can procure their daily requirements. Moreover travelling far away for procuring daily needs is also a burden in our country which has lesser means of public or private transport systems. The pocket of an average is not flooded with currency notes or plastic currency to procure his requirements in bulk quantity. Thus fetching of food and edible articles from far away places and its storing in freezers as in Western or European set up, is also very difficult for an average Indian. Thus a market in the near vicinity and availability of edible articles in the near vicinity is an ideal situation so far as Indian situation is concerned, and a neighbourhood centre provides such facilities. Because there is an acute lack of such facilities in the Plans, the vendors encroach streets and footpaths causing innumerable difficulties. On one side when there is acute shortage of such public facilities, the action on the part of public authorities like AUDA to dispose of plots reserved for such public facilities is deplorable - and that too without making any provision for providing an alternative arrangement for this in the vicinity. We put pointed question to AUDA whether any other plot in the vicinity was allotted for neighbourhood centre after allotting this plot to the Society and we are told that no such allotment of plot is made. It is not possible for us to close our eyes while we are on the road. While drafting plans, objections are invited from people and public at large. Public Authorities are required to provide adequate facilities for streets, roads, open places, gardens, recreation facilities, schools, market, green belts, transport facilities, drainage inclusive of sewerage etc. and its disposal. Public authorities cannot dispose of the plots reserved for public utilities. It is a known fact that on finalising a TP Scheme, plots of private individuals are changed in size and location, which of course cause inconvenience to private individuals, and the public at large may not suffer since Schemes are framed with the implied understanding that it is done for providing facilities for the public at large. After this, privately disposing of plot so carved out for public purpose cannot be appreciated. Mr. Vakil, Amicus curie pointed out about the scheme and submitted that at the cost of people, the benefits for the people at large were provided, and unless and until AUDA is in a position to provide similar facilities, it could not have handed over the plot. Large number of people are deprived of the facilities, which under the Development Act, AUDA was required to provide. Large number of people are adversely affected by this act of the AUDA. Absence of a neighbourhood centre would affect the poor and the middle

class alike. Rich people may be in a position to buy commodities from any place but in disposing of this plot, AUDA has really acted contrary to the interest of poor and middle class sections of the Society, and AUDA has done so because the allotment of land was for I.A.S & I.P.S. Officers as has been observed by us hereinabove. Even after direction of the Court, the property has been put to different use. That, certainly is shocking.

PASSIVE CONNIVANCE OF RESP. NO.4 SOCIETY :

###. This being a Co-Operative Society, we put a question as to whether the Society is aware about the transaction or not, and whether the Society has permitted transfer or not. We are told by Mr. Kamal Trivedi, learned counsel appearing for the Respondent No.4 Society that no resolution was passed by the Society, but in certain cases, no objection certificates signed by the Secretary of the Society were issued [page 1011, 1055]. All the transactions are without the approval of the Respondent No.4 Society.

###. When there is no resolution passed by the Society, and in the absence of transfer of shares, whether the purchaser would acquire any right or not, is also a question to be considered.

###. It is clear that the Society has not taken any action with regard to transfer of the plots without its Sanction or approval as required under the Co-Operative Societies Act, and the rules or byelaws of the Society. In fact, title would not pass in favour of the other person, in the absence of approval by the Co-Operative Society.

###. It is also required to be noted that when there is a Co-Op. Housing Society, AUDA or the Corporation or any other authority is required to take action on the basis of a letter of request or certificate or letter forwarded by the Co-Op. Housing Society, which must be signed by the Chairman or Secretary of the Society. Co-operative Society might have taken a decision in a meeting to empower the Chairman or Secretary or the Managing Committee, as the case may be, and ultimately, it is for the Society to sign the plans for construction. It is also required to be noted that in a Co-Operative Housing Society which is established under the relevant Act for housing purpose, it is the bounden duty of the Chairman or the Secretary to see that the object of forming of the Society is not frustrated. All the members decided to form a Co-Operative Housing Society. The Society was

formed for the purpose of obtaining residential accommodation. The moment without permission of the Society there is erection of a building contrary to the object of the Society, contrary to the purpose for which the land was allotted, the object would be frustrated. It is stated by Mr. Kamal Trivedi that the respondent No.4 Society has not approved any plan submitted before the authorities concerned. In case the Chairman or Secretary of the Society, or the Society as a whole, arbitrarily refuses to sign the plans, drawn in accordance with bylaws/regulations and in conformity with the object of the Society, certainly it is open for such a member to approach the appropriate forum seeking a direction. Merely because in a given case the Court has permitted, it does not mean that in all the cases that is required to be done. No precedent is cited before the Court for this purpose.

###. So far as the buildings which are erected and are being used for residential purposes, the members of the Respondent No.4 Society were called upon to produce before the court the nature of transfer of possession. It was directed that if the property is given on rent or on lease or is transferred, the amount of rent shall be deposited in a separate bank account to be opened by AUDA in a nationalized Bank and it shall deposit the amount so collected in the Bank Account. It was further directed that the Bank, on the amount being deposited, shall automatically invest it in a recurring Fixed Deposit for 46 days till further orders. The Respondent No.4 Society was directed to produce bye laws of the Society. The Respondent No.4 Society was directed to give details of its members at the time of its inception. The Respondent No.4 Society was directed to furnish details as to the persons who were not members initially, became members subsequently.

###. It also appears that no resolution is passed by the Respondent No. 4 Society permitting transfer of plots. When there is no such resolution passed by the Society, and in the absence of transfer of shares, the purchaser would not acquire any right. If the Secretary has issued no objection certificates, without there being any resolution of the Society to that effect, it calls for strict action. Such certificate is of no value and consequence.

###. To sum up, there are shops, commercial offices, school, restaurants, and banks in the buildings constructed by these officers on the land allotted to them for residential purposes. Yet, the Society has not

taken any action. Many plots are transferred. Yet, there is no action from the Society.

###. The Chairman of AUDA, in his affidavit at page 64 has stated that except one, viz. Shri C.J. Jose, nobody has obtained permission of AUDA for transfer of premises and AUDA was unaware about the transfer of the premises made between the original members and new occupants. He has further stated at page 65 that out of 54 sub plots, only 27 sub plots have been allotted to original members of the Society whereas the rest of the 27 sub plots have been allotted to new persons for which neither any permission is taken nor any exact information has been given to AUDA, and it is only on 3.11.2000 after the Court took cognizance that the Society has submitted two lists one containing 'list of members' and the other containing 'list of members (new)'. What could be the reason for keeping AUDA in dark about transfer of plots? The only inference that could be drawn from this is that the respondent No.4 Society do not want the public at large and even a public body AUDA to not know the dealings which has taken place.

VIOLATION OF CO-OPERATIVE SOCIETIES ACT:

###. For a fair distribution of material resources amongst the members of the society at large, the legislature enacted a law, viz. the Gujarat Co-operative Societies Act. In order to see that, if possible, land can be made available to a person having no house or land for constructing a house, the provisions are made for achieving a fair distribution by removing inequalities. However, persons having vested interests, or with a view to promote their selfish ends, cannot be allowed to take undue advantage by becoming a member of a Society falsely declaring that neither he nor his family member is a member of any Society or neither he nor his family member held any house or a plot for construction of a house. For social and economic justice, the State or its instrumentalities has to see that there is proper and equal distribution of material resources, more particularly the land which is scarce, and it has to act in that direction. The formation of Co-Operative Housing Societies is in that direction. If there is misuse, that too by the high ranking IAS/IPS Officers, others who are entitled to get that benefit would be deprived of the same.

###. An effort is made on behalf of the Respondent No.4 in the affidavit filed by Mr. Varesh Sinha to make a show before the Court that what is done by the Society

has no serious consequence. At running page 3 it is stated that members of the respondent No.2 agreed to transfer the funds for the purpose of land at Ahmedabad through the respondent No.4 Society. However, no documents in support thereof is placed before the Court; Neither the copy of the resolution nor the statement on oath conveying the date on which the resolution was passed is placed before the Court. A Society is a legal entity and its funds cannot be transferred so lightly even if its members are common. It requires permission of the authority, Resolution of Society, but no details are placed on record showing such permission. Stand of Respondent No.2 Society is quite different.

###. So far as clause 24 in Leaflet `U' is concerned, it specifically states that the member shall use the property for his residence only and shall not give on rent to anyone. It further provides that in unavoidable circumstances, if he wants to let the property on rent, then before that he will have to obtain permission of the Committee. If the Society or the State Government or a Co-Op. Society has granted any loan facility then over and above the Managing Committee such member shall have to obtain permission from the Registrar for giving the property on rent before it is actually rented. Not only that but the said condition no. 24 also provides that 10% of the amount of rent shall be deposited in the reserve of the Society. If any one commits breach, then as per clause 17, action will have to be taken for terminating his membership or Managing Committee shall impose fine. Such member's membership, if, is required to be terminated or fine is to be imposed as per the instructions given by the Registrar, then it will be the responsibility of the Society to see that the same is carried out. Nothing is placed before us to show that the Society has taken any action in spite of violation by its members.

###. As regards the Co-Operative Societies Act, it is clear that the purpose of the Act is frustrated and the public exchequer suffers as the land was allotted at a concessional rate to a Co-Op. Housing Society for construction of residential premises for its members. In view of the byelaws of the Society, all transactions must be in conformity with the regulations framed by the Society or the rules or byelaws of the Society and it can never be left to the individual member. Neither an individual member, nor the members collectively, can commit breach of the regulations. Each and every member including the Society are bound by the byelaws and the relevant Act. When we pointed out the fact that an

ordinance has been issued by the State Government for regularization of illegal constructions, learned Advocate General submitted that the said ordinance will not be applicable to the constructions on the lands in question because the lands were allotted for a specific purpose, i.e. for construction of residential houses for the members and such construction in view of specific provision made in the ordinance cannot be regularized.

###. Mr. S.B.Vakil, learned amicus curiae submitted that Section 181 of the Indian Penal Code relates to making false statements to a person authorised by law to administer oath or affirmation. Section 193 of the IPC provides for punishment for false evidence. He further submitted that complaint can be filed before the Court of Magistrate against the persons who have made false statements before the Court.

TENANT-OWNER SOCIETY: AN EFFORT TO COME CLEAN

###. In paragraph 12 of the affidavit (page 33) this deponent has stated that as per the characteristics and special features of the tenant owner Society, an individual member of the Society is allotted plot or portion of land from the land belonging to the Society and the member puts up superstructure on that land at his own cost, he becomes the owner of the superstructure. It is further stated that in the present case, each individual member of the Society is a tenant of the Society as regards plot of the land allotted to him and as and when he puts up superstructure on the plot of land allotted to him, the superstructure would belong to the member. He has come out with a version that the tenant-owner Society is distinct from tenant-co-owner Society. In the present case, according to Mr. Sinha, Secretary of Respondent No.4, each individual member of the Society is a tenant of the Society as regards to the plot of land allotted to him. As and when he puts up the superstructure on the plot of land allotted to him, super structure would belong to the members. He has further stated that applications were received from individual members for grant of permission to dispose of the respective plots. The Society has refrained from giving any such permission and continued the original membership of the members without there being any change. The land belongs to the Society as said by him. According to him, the super structure could be transferred by way of sale, mortgage or even possession can be handed over to a tenant. Thus, it is clear that he is coming out with a version that plot would continue to be in the name of the member, yet the structure could be transferred by any

mode and in fact that is done. Reading the contents, it is very clear that the members of the respondent No.4 obtained the plots for the purpose of profiteering and not for residence.

###. The concept of tenant-owner Society is tried to be brought in for the first time through this affidavit. If this was the nature of the Society, it should have been so mentioned in the lease deed, but the lease deed is silent on this aspect. Moreover, except mere averments to save the skin, the memorandum of association of the Society or any rules and regulations of the Society pointing out that this is a tenant-owner Society is not produced before us. Moreover, the available records do not support version, hence no importance can be given to this submission.

###. We have indicated earlier that there were three Societies registered on different dates. So far as the Society which came into existence subsequently and took possession of the plots, had initially ten members only. We have referred to some of the names earlier. The Society was registered on 5.7.1990. It was a Society for construction of residential houses for members, and not for commercial building which is clear from page 498 of the record. The Co-Op. Society was required to allot the plots for construction of residential houses. Clause 3 [page 498] refers to co-ownership and not a tenant-owner, tenant-partnership society. It appears that on the basis that it is a tenant-owner Co-Op. Society which is quite distinct from tenant-co-ownership Society, an opinion was obtained. The opinion proceeds on the assumption that the Society was a tenant-owner Society while clause 3 refers to tenant-owner as well as tenant-co-owner Society. So far as tenant-owner is concerned, the clause has been specifically scored off. Not only that, but that part is also initialled and therefore, it is not a tenant-owner society. So far as the Registration of a Co.Op. Housing Society Respondent No.4 is concerned, it's byelaws are produced from page 493 to 515. Clause 8 refers that the members of the Society either directly or indirectly shall not hold more than one plot. Clause 9 at 499 specifically refers that without obtaining permission of the Registrar, one shall not be entitled to sell the plot or shall not be entitled to change the use or construct. If any incorrect information was furnished, then as per clause 13, it would result in consequence of taking the plot from the member on payment of the amount which he might have paid. Clause No.16 also refers that if the declaration in form 'B' is found to be incorrect or false, even then as per

clause 13, he shall cease to be a member of the Society. Clause 18 further indicates that if a member is not completing the construction on the plot within the time specified by the Society or after construction of house, the allottee is not residing therein, he shall not be entitled to exercise a right of a membership of the Co-Op. Society. So far as the transfer of property is concerned, clause 21 puts a restrain. It states that without prior permission of the Society, the member shall not sell, give or transfer in any way the property or shall not create encumbrance or mortgage or shall get loan on the property by any means.

###. Schedule for tenant-owner Society is given, which is on page 511-512 of the paper book. That has been scored off, and initialled by the office bearer of Respondent No.4. Not only that, but the persons who are members of the Society have signed the same. Thus, they were well aware that the society is not a tenant-owner Society but it is a tenant-co-owner society. Even the schedule pertaining to the tenant-owner Society is scored off and that is also signed by the members. Thus, it is clear that the Society, by suppressing and misrepresenting the facts, has obtained the opinion. Even an affidavit is filed to the effect that the Society is a tenant-owner Society and it is equally misleading from what we have stated hereinabove.

###. Clause 16 refers to co-ownership society. Sub-clause (2) provides that if a member of the Society having individual plot and if he is not willing to enjoy the property, then it will be for the Managing Committee to let out the property in such a way that market rent can be recovered or any part of the property can be given on rent, but it can be rented for a period of not more than 5 years.

###. It is required to be noted that the land was allotted by AUDA to the Society, and not to individual members. In turn, the Society has allotted the plot to the members. Thus, the ownership of the land is not transferred. It is in view this fact that it cannot be said that the ownership is with the individual members, and even the Society is not the owner of the land since it is leased only for 90 years. In the circumstances, it cannot be at all said to be a tenant-owner Society.

###. It appears that legal opinion was sought as there were doubts or some difficulties by stating that the Society is a tenant-owner Society. We have already clarified hereinabove that it cannot be said that the

Society is a tenant-owner Society and this fact is crystal clear even from the documents produced on record which is signed by the Government authorities as also representatives of the Society. It is required to be noted that even at page 550 there is a specific reference while registering the society that it is not a tenant-owner Society. Inspite of the glaring documentary evidence, opinion is pleaded as a defence. It is submitted by some of the plot holders that in view of the opinion, they have acted. The opinion is obtained without disclosing that the Division Bench of this Court specifically observed that plots were given to the members for their residential purpose.

###. Before proceeding further, we pause here for a moment to state few words about the practice of producing legal opinion on the record of a case before the Court. In the instant case, legal opinion - more particularly the opinion given by none other than a retired Chief Justice of this Court has been produced on record. We deprecate the practice of producing on record copy of legal opinion. This falls short of nothing but trying to intimidate this Court.

###. On the basis of the documents tendered before the Registrar, Co-Operative Societies, it was submitted that it was a tenant-co-owner Society, which undertook the work of providing residential accommodation to its members. All members of the Society, who were members from the beginning or who became members subsequently, are thus bound by the rules framed under the Act, which are produced in the leaflet 'U'.

VIOLATION OF CONDITIONS OF LEASE AGREEMENT / DEED :

###. On behalf of AUDA it was pointed out that in view of condition No.5 of lease agreement, lessee cannot transfer the land allotted to him. In the instant case, it appears that AUDA might have executed documents in good faith, and under a bonafide belief that the persons are the members of a Co-Op. Society to which the land was allotted by resolution and the Society which made the payment. In view of condition No.5 of the lease agreement, the condition would apply to the persons who have become members of the Society in whose favour the lease document has been executed and members, therefore, were not entitled to transfer the land allotted to them.

###. Out of the plots allotted to its 54 members, only 17 members have completed the construction work and the buildings are occupied by none of the members is clear

from the list submitted by the respondent No.4 Society. It is also stated in the said list that construction work is under progress in three plots. We called upon the respondent No.4 Society to submit a list of the present occupiers and on perusal of the same, except Mr. Varesh Sinha (who is occupying only third floor of the building) none of the allottee is residing in the premises constructed there. Under the pretext of getting housing accommodation for the members at Ahmedabad, one Society persuaded AUDA to allot the land and it is clear that surreptitiously possession is taken by another Society subsequently having similar name. Moreover, the list given by the respondent No.4 Society giving names of the occupiers and usage of the property is not in conformity with the list given by AUDA. Those who constructed the premises had transferred the possession either by way of rent or sale. Some members have transferred the plots by sale. Demand was for the purpose of constructing residential houses for their own and not for commercial purpose or for making out money by whatever means.

###. In the instant case, the occupier is not the lessee. He is not the person acquiring any right through the respondent No.2 Society. In the facts and circumstances of the case, grant of relief to the members of the respondent No. 4 even on the principle of just, equity and good conscience cannot be pressed into aid on the facts and circumstances of the case. It is known that the Court of equity must act so as to prevent perpetration of legal fraud. It is expected to do justice by promotion of honesty and good faith, so far as it lies within its powers. The courts have pointed out on various occasions that the party seeking equity must come to the court with clean hands. From the facts, it is clear that AUDA was persuaded to believe that the persons signing lease deed were the members of the respondent No.2 Society. Had it been disclosed to AUDA at the relevant time that the members who are signatories are the members of the respondent No.4 Society, the matter would have been different.

#. It is required to be noted that Chairman of AUDA in paragraph 7 of the affidavit filed by him has pointed out that in view of "condition No.5 of Lease Agreement, lessee cannot transfer the land allotted to him". The lease agreements executed earlier, as well as lease deeds executed at later point of time, both are placed on record one BY AUDA and one by the Respondent No.4 Society. The agreements which AUDA has produced are required to be appreciated. Xerox copy of agreements, three in number are placed on record. Reading the same,

it appears that agreements having certain blanks are executed by Shri S. Jagadeesan, the Secretary of the Society as well as Estate Officer of AUDA. Signature of the Secretary of respondent No. 4 Society appears on every page of the agreement. At page No. 2 of the agreement, we find that against the column "Occupation", nothing is mentioned and the same is kept blank. There are also blanks in page No.3 with regard to amount etc. The relevant terms and conditions as stated in pages No.4 and 5 are as under:

"1. The period of lease shall be 90 years from the date of this deed.

3. The monthly rent shall be payable by the lessee in advance on or before 10th day of each month. In case of default the lessee is liable to pay penal rent at the rate that may be fixed by the lessor and/or the lessee shall be liable to be evicted.

4. The lessee shall not alter, change, modify and or demolish or any structural modifications or the change the premises without the prior written permission of the Lessor.

5. The lessee shall not mortgage, exchange or transfer or part with the possession or sublet the premises or a portion thereof without the permission of the lessor.

6. The lessee shall not carry on any trade, business or activities, i.e. prohibited by law time being in force.

#. Therefore, even if for the sake of argument, it is accepted that members have some serious difficulty financial or otherwise, then they were required to take permission for the purpose of transfer of plot. But, as pointed out by AUDA, there is transfer of plots without its permission. When AUDA itself allotted the plots for the purpose of residence and if there is non-residential use, it can be said that AUDA itself has no respect for its own resolutions. Reliance was placed on Resolution No. 243[95-96] for the purpose of transfer, which is found at page 104. Reading the clause, which is in detail, it is very clear that if the land / property / shop / flat is purchased at the market price or in auction, then land / property / shop / flat can be transferred including by way of sale.

#. As regards condition no.3 of th e lease deed, neither AUDA nor the Respondent No.4 - Society, at any stage has stated that the said condition no.3 is complied with. Hence, it has to be presumed that there is violation of the condition no.3 also, which ultimately provides that the lessee shall be liable to be evicted in case of default in payment of rent.

###. At various places, we find reference to the term "premises", "premise" or "property".

###. Condition No. 13, 18, and 19 which are also relevant, are reproduced below:

"13. The lessee shall not do or permit other person in the premises anything that may cause inconvenience to general public or neighbours or residents at the locality.

18. The lessor shall have the right to terminate the lease at any time during the continuance of the lease by giving one month's notice in advance and resume possession in case of breach of any condition noticed by the lessor.

19. The lessor shall have the right, notwithstanding anything contained herein to cancel the allotment and the lease on a one month's notice:

(i) if there is violation by the lessee of any of the provisions of this Deed or the terms and conditions as laid down in prospectus for allotment of premises or as may be specified from time to time.

(ii) When the period of lease expires, or,

(iii) If the lessee defaults in the payment of rent or any other amounts lawfully due from him for a period of 6 (six) months.

###. Reading the documents produced by AUDA, it appears that the documents with blanks were executed on 16.4.1991. The Respondent No.4 Society was registered in 1990. Xerox copy of the lease deed which was executed on 3rd February 1995 is also placed on record (pages 38 to 46). The terms and conditions are the same. It is signed by Shri S.Jagadeesan, the Secretary of the respondent No.4 Society as well as authorised signatory

of AUDA. It is also signed by witnesses. AUDA has pointed out in its affidavit that breach of the lease agreement is committed.

###. It is no one's case that what was leased was a building or house with open land. What was leased is the plot of land without any building or house. Hence the word 'premises', means that plot or its part cannot be mortgaged, transferred, exchanged or possession cannot be parted with in any manner including by subletting. The Chairman has also filed affidavit stating the same thing. The word 'premises' in the context of the facts situation means plot of land.

###. Secretary of the respondent No.4 Society has come out with a version that condition No. 5 of the letter dated 18.1.1995 addressed by AUDA applies only to the Society and not to the individual members thereof, meaning thereby that the members can transfer the plots and not the Society. In the instant case, members were interested in transferring the plots and not the Society, and, therefore, it is suggested that, it is open for the members to transfer the plots in view of letter dated 18.1.1995. It is a misreading of the condition itself. The premises of the Society, in view of the provisions contained in the byelaws and rules, even structure cannot be transferred. He has relied on another letter dated 24.6.96 clarifying that the instance of renting out and transfer of plots to family members is permissible without charging any premium. He has come out with a version that there is difference of opinion between AUDA and the Society with regard to the interpretation of clause 5 of the Deed. AUDA has interpreted this clause to deny the building permission to some who have been members from the very beginning and in some cases AUDA has demanded payment of premium for allowing the change of membership. This statement of demanding premium for change of membership is difficult to digest because in paragraph 13 he has stated that the Society has refrained from giving any such permission to members and original members continue without there being any change.

#. This deponent has also come out with a case that AUDA is entitled to grant development permission for construction and use of the premises for purposes other than member's dwelling unit, i.e. for use as Nursing Home, Bank, Dispensary in the designated residential zone. The deponent has forgotten that the application was made by the respondent No.2 for the purpose of housing accommodation for the members only. Therefore, these arguments are not available to the deponent. The

respondent no.4, in view of conduct and admission, now can not change the stand. The application was by Respondent No.2 for residential houses. Before the High Court by filing an affidavit, it was specifically stated that the need for their housing accommodation was considered (though when allotment was made, these officers applied for plots at Gandhinagar and were allotted at that time). Even the Division Bench, in view of the statement made on oath disclosing that they need for housing accommodation specifically, observed in that behalf. After the Judgment delivered by the Court, it is not open to back out from what was stated. It is not open to state that members can carry out construction other than member's dwelling unit or that member can transfer the property. Before the High Court it was never disclosed that plots were allotted at Gandhinagar. The State Government is represented by its executives. AUDA was also controlled by executives. All kept mum about the allotment of plots at Gandhinagar. Subsequent conduct of disposing of plots and disposing of superstructure is nothing but breach of faith reposed in them that they genuinely require the plots for residence.

##. About the Building Use Permission, secretary of the respondent No.4 Society has left to AUDA to throw light upon the subject and has refrained from stating anything.

##. It is submitted by Mr. Vakil that the senior officers of the Government, were not in need of the plot, yet misrepresented and obtained a large plot, though most of them were given residential plots at Gandhinagar also. Once the construction is not carried out within the time stipulated, it is not only a breach of the condition under which it was given but it is also in breach of the byelaws of the Society, and one has no right to continue as a member. Mr. Vakil, learned counsel submitted that Co-Op. Housing Societies are given several concessions only with a view to see that the persons who are in need of residential accommodation are given some facilities, and intention is not to allow such persons to earn profit. As a matter of fact, he submitted that needy persons are not getting the land in Ahmedabad City and these persons, though they have got their own bungalows or plots at Gandhinagar, were given the plots in a Society. Some of them have not carried out construction, some of them who carried out the construction have given the property for commercial use, some of them have sold the land at huge margin and in some plots even flats are constructed which are sold to outsiders. He submitted that these activities are in clear violation of the provisions of rules and regulations and undertaking given

to the Court.

WAS THE PRICE NOT CONCESSIONAL & WAS AIM NOT PROFITEERING? :

###. An effort is made is to show that the price at which the land was allotted is not a 'concessional rate'. There was no compulsion on the IAS/IPS officers to purchase this land. If the price was not concessional rate, they would have refused the land. Moreover, this argument has no merit at all. The lands were handed over in the year 1990. If we take the example of one of the allottees, viz. Shri H.K. Khan, he was allotted the plot in 1991 at the total cost of Rs.4,01,950/- as stated by him in his affidavit (page 949-963), and he sold the plot at Rs.22,00,000/- in 1996. In a period of mere six years, the appreciation is more than Rs.17 lakhs. Similarly, Shri B.L. Jha who was allotted a plot at Rs.3,20,000/- sold it at Rs.19,00,000/-. Here also, the appreciation is more than Rs.15 lakhs. If the land was not allotted at a concessional price, it would never have fetched appreciation almost by five times, even if a consideration is given for the average increase in price. Hence there is absolutely no merit in the submission that the land was not allotted at a concessional rate. Considering 10% appreciation in market value as pointed out in land acquisition matters by the Apex Court in various cases, the value of the plot would be Rs.11,70,000/- considering value of the plot at Rs.22,00,000/- in 1996-97.

###. Moreover considering the price e at which Mr. Khan has disposed of his property, (page 949-953) it does not lie in the mouth of AUDA to say that its Town Planner has fixed the correct value. Comparing the sale price at which Mr. Khan disposed of his property with the sale prices indicated by others, it is crystal clear that they are not disclosing the correct value of the property.

###. Mr. Vakil further pointed out that in view of the aforesaid rules, the allotment was not for the purpose of profiteering but allotment was only for the purpose of providing residential plots. The fact that the construction is not carried out by various members clearly reveals that they do not require plots for residential purpose, and the motive behind is profiteering.

###. It is pertinent to note that the Ahmedabad Urban Development Authority [Disposal of Lands & Other Properties] Regulations, 1984 provides for disposal of

the properties. The property can be disposed of by holding public auction or by inviting tenders through public advertisement. This can be said to be a mode of disposal of property by inviting public at a large. The other mode is to make offers or to accept offers from the State Government, Government of India, Local Authority, Public Sector Undertaking, Cooperative Housing Society, Educational Institution and such other body or Institution as indicated in Subclause (iii) of Rule 4. When the housing cooperative society has made an offer and the offer is accepted, it cannot be said that at the market price the property has been disposed of as there is no public auction or property is disposed of not by inviting tender.

##. For fixation of price at page 820, th e secretary of the society has come out with the version that the society tried to induct as many members as possible even though the land price was paid. (who paid for the persons who were not members at the initial stage is not stated) It is improper to say that the society Respondent No.2 tried to induct members. As a matter of fact, initially application was for 77 members and when more particularly, it was stated that it was for more than 100 members, the plots have been divided amongst 54 members. It appears that those who were allotted plots at Gandhinagar were satisfied with the plots and were not greedy for land grabbing. They were/are the officers, who acted according to law. They were not out to file false affidavits to get plots. We appreciate their non-appreciation for land after allotment at Gandhinagar. It was also the case that the there was encroachment. It is not believable that these officers would purchase land which is encroached upon or they would purchase land for which litigations are pending. At page 820 for Respondent No.4, it was stated that the members were admitted till the middle of 1992, meaning thereby initially members were much less, as per his say. Therefore, initially the lease deeds were not executed as stated by AUDA. No details of amount contributed by the members have been placed on record by the secretary on oath. How this society took the possession is not stated by the secretary of the society? He has come out with the case at page 822, that AUDA took the price, which was more than the market rate for land and they were required to spend for levelling and removal of encroachment. However, no details are placed on record. Other members have disposed of plots at a very higher rate which is a gospel truth. [We have given an illustration of Mr. Khan & Mr. Jha]. In paragraph 22, the secretary of the respondent society has come out with the version that it

is not necessary that the society should have been registered before the land is allotted. He has stated that 22 cooperative societies were allotted the plots, which were not registered at the time of allotment of land. But, no details are placed on record.

###. In the instant case, what is required to be noted is that much prior to the registration of the society, part payment was made by the respondent no.2 - society and subsequently also, before the possession, the respondent no.2 made the payment, that is the case of AUDA. It is the case of AUDA that the land was allotted to that society and in this background, say of the respondent no.4 society cannot be accepted. The secretary has relied on a condition on which other 22 cooperative societies were allotted the lands and stated that the land was allotted to them with a condition that the society should be registered within 60 days of the receipt of the allotment letter. No such documentary evidence is produced by Respondent No. 4 society. In the instant case there is no such condition because the society was already registered at Gandhinagar and it is that society which forwarded the application and made the payment.

###. Surprisingly, the secretary, at pages 823 & 824, has come out with the version that functionaries of AUDA were aware that there was requirement of Ahmedabad based society. It is not the case of AUDA because AUDA decided to allot the land much earlier to Respondent No.2, registered at Gandhinagar. The secretary has come out with the version, at page 824, that only 16 persons were interested out of 75 members. If that was so, there was no earthly reason to stick to the demand. The respondent no.4 - society has come out with the version that the problem was discussed with AUDA. However, this fact is not supported by AUDA in its affidavit, therefore, there is no question of clarifying position. A letter was addressed to AUDA on conclusion of the meeting with AUDA functionary who agreed that procedural formalities, if any required at their end would be taken care of. On the contrary, AUDA has come out with the version that the plots were allotted to the society registered at Gandhinagar and not to the respondent no.4. The secretary of the society, at page 825, has stated on oath something contrary to the material produced on record. Receipt issued by AUDA for payment of Rs.6.65 lacs is produced on record, which is dated 16/06/1989. It is this secretary who has come out with the case that the money belongs to the members and not the society. If that is accepted then, it is very clear that these

officers under the name of the society purchased the land and subsequently divided in sub-plots and some of the members disposed of the plots. About the payment of Rs.103 lacs on 30/05/1990, the secretary has come out with the version that, that was made from the loan proceeds of those individuals who wanted to acquire the plots. We have earlier dealt with this issue and held that Respondent No. 4 could not have made payment because on that day when Respondent No.4 society was formed, there were only 10 members and it is beyond imagination that they could have managed for payment of Rs.1,03,85,000/-. No corroborative evidence is placed by Respondent No.4 in the form of an application made to the Bank and that Bank sanctioned the amount. The statement cannot be accepted in view of the fact that the receipt has been issued by AUDA, which is placed on record at page 584 being Receipt No. 44414 dated 30/05/1990. It clearly indicates that the amount has been received from `Sumangalam Cooperative Housing Society Limited'. The amount was paid by a cheque drawn on `State Bank of Saurashtra', Ahmedabad. That is also clear form the copy of the letter produced at page 583. Thus, in view of the letter addressed by the secretary, it is clear that the amount was paid, and in response to cancellation of allotment order dated 1/12/1989, request was made for reconsideration vide letter dated 21/12/1989 by the society. In year 1989, the respondent no.4 - society was not in existence. After considering the amount paid by the society on 16/06/1989, the remaining amount was required to be paid by the society registered at Gandhinagar.

##. In our opinion, in view of the statement made by the secretary on oath, it appears that though the land was allotted to the respondent no. 2 - society registered at Gandhinagar by AUDA, these individual members, 16 in numbers, took advantage of the situation. [As per record, there were only 10 members]. There was no reason for 16 officers to be active in getting the land and to arrange for money when they were already allotted the land for the purpose of residence at Gandhinagar. The secretary has come with the version that after proposal to form the respondent no.4 - society was mooted, AUDA had been mentioning the name of the said proposed society, i.e., "Sumangalam Cooperative Housing Society Limited" and not the name of respondent no.2 society, i.e., "Sumangal Cooperative Housing Society Limited" and has stated that this further goes to show as to the understanding on the part of AUDA about its allotment of land for the benefit of almost the same group of the respondent no.2 - society having decided to form the

respondent no.4 - society. It is difficult to accept this version. Record on the contrary indicates that Mr. Jose was also writing letters in the name of "Sumangalam Cooperative Housing Society Limited", even when respondent no.4 was not in contemplation. Therefore, it is clear that similarity of the name has been misused. The man of ordinary prudence would not act in a manner in which the respondents have acted. If the respondent no.4 - society was interested in the land, it should have requested AUDA to allot the land by writing letters or by making application, but nothing has been done and AUDA has not supported the say of the respondent no.4 Society. From the record, it appears that the officers of AUDA have not acted intelligently and diligently, but have acted negligently.

EVERYWHERE A STEP AHEAD - WHAT'S THE FORCE BEHIND? :

###. It is interesting, and it certainly is a very important aspect of this matter, to note the force behind the entire case. The 'subject' of the three letters (at page No. 448, 449 and 450) makes the force very clear. It says " grant of land for residential use to I.A.S. & I.P.S. Association". The Society is a mere shadow but in reality, the land was allotted to "I.A.S. and I.P.S. Association". The speed in which the applications are processed, price is fixed, documents are negotiated, possession is handed over - all and more happened only because the land was to be allotted to I.A.S. and I.P.S. Association.

###. In view of the aforesaid letters at pages 448, 449 and 450, it is very clear that Shri Prasad, Chairman of AUDA and Shri C.J. Jose, Chairman of the Society agreed to the price, and decision thereof was already taken to allot land. There was no reason otherwise for the Society to write to AUDA and price indicated by Chairman of AUDA to Society and the Society stating that it is prepared to purchase the land. Thus there is no question of allotment of land, but as if it is a private property, the deal already took place, and thereafter a mere show was made of passing resolution and fixing the price. This relevant material was suppressed from the court at an earlier occasion and even before this Court, except placing the material on record, nothing has been stated on oath about the letter. Therefore, we are of the view that the price has been determined by Mr. A. Prasad in the year 1987 itself that the land should be allotted to I.A.S. and I.P.S. officers at the price determined in 1987 by the Chairman of AUDA, who was also a member of

the Society.

###. The AUDA allotted plots to the Society for construction of residential houses for members only and it was for the Society to construct or allow the members to construct residential houses as per the byelaws. In the instant case, without waiting for the variation in plan, these officers approached AUDA for permitting them to construct the building. An officer of AUDA would not permit ordinary citizen to use the plot except for the use permissible, but AUDA permitted the use of plots for a purpose which was not permissible without waiting change/variation in plan, only because the allottees were influential IAS, IPS Officers. We have indicated that breach has been committed of the Rules of the Society. Yet, no action has been taken either by the Society itself or by the Registrar of Co-Operative Societies. Is it because the members of the Society were IAS/IPS Officers, serving the Government that actions were not being taken? Is it because the members themselves were parties to the game and therefore no action is taken? The dearth of action inspite of clear violation of Rules speaks a lot - more particularly when no explanation is submitted either by the Society or the Registrar of Co-Op. Housing Society.

THE WAVERING ATTITUDE OF AUDA :

###. Reading page 574 it appears that as the respondent No.2 Society did not pay up the amount, the matter was discussed at the Board Meeting of AUDA. At the relevant time, Shri Prasad was not the Chairman of AUDA. It appears that a decision was taken that as the plot for neighbourhood centre cannot be allotted for residential purpose, and after taking into consideration the opinion of Chief Executive Engineer it was decided to cancel the allotment of neighbourhood centre land. Reading the resolution it further appears that it was discussed in the Board Meeting that the plots cannot be used for any other purpose. We are surprised at the wavering attitude of AUDA. Sometimes it is of the view that the facilities of neighbourhood centre already exists and therefore there is no need to reserve this land for this purpose (see 555); After having allotted the land with this impression in mind, when the matter was again discussed at the Board Meeting the Board of AUDA is of the firm view that the plot reserved for neighbourhood centre cannot be used for any other purpose (page 574) and therefore, the allotment is cancelled. At this Meeting, it was also resolved to dispose of the land by inviting public tender. But soon thereafter on 19.1.1990 (page

580) AUDA has taken a somersault and inspite of its earlier version that the plot reserved for public housing and neighbourhood centre cannot be used for any other purposes, decided to allot this plot to Sumangalam Society. Ultimately, by order dated 19.1.1990, it was decided to allot the land. Is it the way to deal with public properties? Can one change and then re-change and then again change purposes of public importance at the sweet will of the persons sitting at the helm of the affairs totally disregarding the public interest involved in it? In a State governed by the 'rule of law' can such changes be permitted to suit the desire of the certain class of people only? We have already held that AUDA is merely for regulating development and not authorised to change in use.

FALSEHOOD FROM INCEPTION AND SUPPRESSION THROUGHOUT:

###. It is admitted by the Secretary of the Society Respondent No.4 that most of the members were outside Ahmedabad. Many were in Delhi and few even abroad. If that be so, what was the need for such persons to obtain plots at Ahmedabad? This was the position at the time of filing of this affidavit and even on the date of obtaining plots, many were not in Ahmedabad, and , therefore, a false representation was made that they need plots at Ahmedabad. In the application for allotment of land (Page 446), the contention was as under:

> "There is also a shortage of Govt. accommodation in Ahmedabad and Gandhinagar and in the current situation, Govt. does not have resources to invest in housing schemes, for Govt. Officers."

###. Hence, the thrust of the application was that land is required for about 100 Govt. Employees as there was shortage of Govt. accommodation in Ahmedabad and Gandhinagar. However, Mr. Sinha now says that most of the members were outside Ahmedabad, in Delhi, and few even abroad. Thus, this submission runs contrary to what is stated in the application for allotment and, therefore, this is nothing but an after thought to shield the change of user.

###. Chairman of Respondent No. 4 has also placed on record certified copy of the resolution dated 29.5.1998 of respondent No.4 Society which has been communicated to AUDA vide letter dated 3.11.2000 which is at pages

111/112. Reading the same, it appears that for the purpose of obtaining the plots initially it was disclosed to AUDA that there are about 77 members. Obviously relying on this representation, AUDA has allotted plots of larger size. However, it is stated that some refused to accept the offer, and, therefore, new members were admitted and ultimately to 54 persons, plots were allotted but the list was not forwarded to AUDA. This speaks a lot about the manner in which representations were made to AUDA. Plots were taken of larger size and then distributed amongst few persons. One was expected to give the names of the members of the Society to AUDA and if membership reduced, then it was the duty to request AUDA so that AUDA could have disposed of the plot in public auction in public interest. However, these high ranking officers sub-ploted the land initially making a representation that there will be 100 to 150 members, and giving a list of 77 members at the initial stage, divided the land amongst 54 members only. [Earlier demand / correspondence was not on behalf of Respondent No.4].

###. At the time of execution of document, had AUDA been careful enough, it would have been known that the society, which is executing the document is a different society. There are letters on record to indicate that the registration number of the society, which is registered at Gandhinagar on 10/10/1986 is G.9675. When the allotment was cancelled, the society addressed a letter dated 21/12/1989, xerox copy of which is produced at page 577, which clearly reveals Registration No. 9675 of 1986. There is correspondence which indicates that since year 1988 in the name of `Sumangalam Cooperative Housing Society Limited', its members were addressing the letters including Mr. C.J.Jose. Thus, AUDA was aware that the Society bearing No. 14292 is not the society to which the plots were allotted. AUDA executed documents without verification, it speaks a lot about management of AUDA. It could only be done, if these high officers had influence over the subordinate officers of AUDA. One should not forget that the Chairman of AUDA was a member of the society. It is nothing but, a fraud played with AUDA. When fraud is there with the public authority, matter is required to be viewed very seriously. The correspondence placed on record clearly reveal that correspondence by the society registered at Gandhinagar is by using the name "Sumangalam Cooperative Housing Society Ltd." and the Respondent No. 4 has taken undue advantage of the name and that was not the society which made application in the year 1987. Some of the persons were common including office bearers and were aware about

Respondent Nos. 2 & 4 and also demand by Respondent No.2 and allotment in favour of Respondent No.2. Thus, when by suppressing all these facts, orders are obtained, it cannot be pleaded as defence that the Court has decided the matter earlier. It is clear that AUDA allotted the land to the Respondent No. 2, that is the society registered at Gandhinagar and if that be so, the document executed by the society registered at Ahmedabad [Bodakdev] having Registration No. 14292 of 1990 has no value.

###. Mr. Jagadeesan, Secretary, Sumangalam Cooperative Housing Society Limited has executed documents, copies of which are placed on record. AUDA could not have executed the documents with the society. At the same time, the Secretary could not have misrepresented that he is representing the society in whose favour allotment has been made by AUDA. At this stage, it is interesting to note that it is this Shri Jagadeesan, who addressed the letter to AUDA on 21/12/1989, a xerox copy of which is produced at page 577. He has signed the letter on the letter-head of Sumangalam Cooperative Housing Society Limited, on which Registration No. 9675 of 1986 is mentioned [society registered at Gandhinagar]. He has referred to the letter dated 27/04/1988 for excessive price fixed. He has referred to the letter dated 21/07/1989 and other aspects also. In paragraph - 9, he has referred to letter dated 16/06/1989 stating that amount has been paid to AUDA. Thus, he was very well aware that it is a society registered at Gandhinagar, which applied for allotment of land and made payment for allotment of land, and yet knowing full well that AUDA has not allotted the land to the society registered at Ahmedabad [Bodakdev], he himself has executed the documents. It is also required to be noted that there are some documents placed on record, which are signed by the Secretary, Sumangalam Cooperative Housing Society Limited and the Estate Officer, AUDA. In these documents, we find blanks at several places. Such documents are at pages 71 to 97. All are signed by the Secretary and the Estate Officer. The Estate Officer has put date of 16/04/1991. Despite the fact that on first page, there are blanks, on second page, there are blanks at several places, at third page, there are blanks at several places including the amount of premium, the Secretary of the society has also signed on all the pages. Shri Jagadeesan has signed possession receipt. AUDA may not have doubted and believing that he is the secretary of the Respondent No. 2 society, has given possession. So far as the Estate Officer is concerned, there is nothing to show that the Estate Officer had

authority to sign on behalf of AUDA. So far as powers to dispose of land and other properties are concerned, transactions are governed by AUDA [disposal of land and other properties], Rules 1984, produced at page 456 onwards. Clause 3, at page 458, indicates that subject to any direction given by the authority from time to time, Authority / Committee / Chief Executive may dispose of land and other properties by sale or lease to be granted in consideration of premium or rent or both for a term not exceeding 90 years in accordance with regulations.

###. In the case of PILLOO DHUNJI SHAW SIDHWA vs. MUNICIPAL CORPORATION OF THE CITY OF POONA reported in AIR 1970 SC 1201, the Court held as under in paragraph 6 of the judgment:-

> "6. .... The Commissioner was, it is true, competent to exercise all the powers and perform all the duties of the Transport Committee. But under the rules in Ch.V the seal of the Corporation must be affixed in the presence of two members of the Transport Committee who sign it in token of the seal having been affixed to the contract. The Act clearly provided by Section 74(2) that the contract which was not made in accordance with the provisions of the Act and the rules shall not be binding on the Corporation. The Contract was not made in accordance with the provisions of the Act, for, it was not sealed, and was by virtue of Section 74(2) of the Act not binding upon the Corporation."

###. The Estate Officer had no authority to dispose of the property by sale or by lease. There is nothing on record to show that Authority / Committee / Chief Executive has disposed the property by way of sale or lease. If the person had no authority to sign the document for disposal of the property, he could not have transferred the property. Ministerial act of signing cannot be delegated.

###. It is also clear that the Respondent No. 4 allotted the plots for individuals in nexus as in all there were 77 members on whose behalf a request has been made and it has been distributed amongst 54 members.

###. It is also clear that Respondent No.4 have taken

possession of the land, though was not allotted the land. On account of similarity in the name, some of the members being the common in old and new society including office bearers, the plots have been appropriated. Therefore, so-called lease cannot be allowed to stand. If such lease is acted upon or permitted to be acted upon, it would mean that the illegality is perpetuated. This is a matter wherein question of public accountability is involved. Neither the officers of AUDA nor IAS/IPS members of the society have acted with bona fides.

AUDA'S RESPONSE TO OFFER OF SURRENDER :

###. Shri Bhanujan has made an offer to surrender the land to AUDA on certain conditions. In this connection, on behalf of AUDA, Shri Surendra M Patel has filed another affidavit on 7.1.2001 (pages 611 to 617). In paragraph 7 (at page 615) it is stated as under:

> "I say that Ahmedabad Urban Development Authority is prima facie ready and willing to accept this offer of Mr. Bhanujan as an exceptional case. I say that sub-plot of Mr. Bhanujan will be offered for public sale and tenders will be invited. I say that from the sale price (hereinafter referred to as "GROSS SALE PRICE") expenses incurred by Ahmedabad Urban Development authority for sale of the sub-plot and transfer fees as referred to in ANNEXURE IV of an affidavit in reply filed by Ahmedabad Urban Development Authority in this Special Civil Application which is dated 13/11/2000, shall be deducted from gross sale price (remaining about as referred hereinafter "NET SALE PRICE") and accordingly, the same will be paid to Mr. Bhanujan through society."

##. It appears that AUDA is interested in taking a stand which may help the officers. Shri Bhanujan made an offer in good faith so that public exchequer may not suffer. It seems that for one or the other reason, despite knowing full well that several illegalities such as possession, development permission, use, transfer etc. have been committed and AUDA has not taken action against such persons, and, when an offer was made in good faith to return the plot, AUDA initially took an unreasonable stand.

###. However, subsequently Chairman of AUDA has filed further affidavit on 7.1.2001 (pages 724 to 727) stating

that AUDA is ready and willing to accept the offer of Mr. Bhanujan as an exceptional case. He has also stated that the Society must approve the surrendering of this sub plot to AUDA as the impugned land is given on lease for 90 years to the Respondent Society and not to an individual member thereof. He has further stated that Mr. Bhanujan's plot will be auctioned by inviting tenders by AUDA and the sale price obtained by AUDA will be deposited before this Court and AUDA will act as per the directions issued by this Court. He has stated that no rules and regulations are framed in this regard and it is for the first time that AUDA come across such a situation. He may be right in this regard.

COMPETENCE OF THIS BENCH TO HEAR THIS MATTER :

##. A contention is raised by some of the plot holders that the petition ought not to have been taken up for final hearing by this Bench. It was submitted that the application should have been placed before the learned the Chief Justice, who would have passed an order to place the same before the appropriate Court, and it was for that Court to hear the matter further. It is required to be noted that after xerox copy of the file was received, the matter was placed before the Bench taking up Public Interest Litigation (Coram: B.C. Patel & C.K. Buch, JJ.). It is further required to be noted that when notice was issued, the said Bench was allotted the matters relating to Public Interest Litigation as per the roster. Thereafter the roster changed and PIL was allotted to another Bench (Coram: B.C. Patel & R.R. Tripathi, JJ.) as per the roster prepared in view of the order of the learned Chief Justice and this matter was placed before the Bench and this matter was extensively heard by the Bench. Thereafter, when the roster was changed on 12th March 2001, this matter was not kept as part-heard by this Bench and was sent back to the Department. However, some advocates appearing in the matter moved the Registrar and later on also mentioned the matter to the the Honourable the Chief Justice and on 15th March 2001, the learned Chief Justice passed a speaking administrative order, part of which we intend to reproduce as under:-

"In both the matters, there is bulky record. In view of the Apex Court's judgment in the case of STATE OF RAJASTHAN vs. PRAKASHCHANDRA reported in (1998) 1 SCC 1, and in the absence of any rules in Gujarat High Court Rules, it may not have been found proper by the Judges to mark the

matters as part-heard. The matter were heard at length on number of days and could not be completed in view of the unfortunate incident on 26th January and subsequent situation that prevailed in the area, and also in view of the fact that in the previous rosters final hearing was taken only twice in a week. If the matter are listed before another Bench for re-hearing, it would be waste of judicial time.

Hence these matters are ordered to be listed for hearing before the same Bench which heard the matters earlier, viz. (B.C. PATEL & R.R. TRIPATHI, JJ.) on Friday the 16th of March 2001, and thereafter as may be ordered by the said Bench."

###. It is in view of the aforesaid order made by the learned Chief Justice that this Bench was specially constituted to hear and dispose of the matter. That is how this Bench has undertaken the task of disposing of the matter, and there is no question of any irregularity in taking up the matter. Thus, it is clear that the entire matter was placed before the learned the Chief Justice on administrative side, the learned Chief Justice after considering various aspects including origin of the proceedings and the relevant law and judgment of the Apex Court in this regard, passed a speaking order.

##. Grievances was made by some of the plot holders through their counsel that a letter addressed to one of the members of the Bench hearing PIL and therefore the Bench consisting of that Judge to whom the letter was addressed should not hear the matter. Under Article 225 of the Constitution, it is for the learned Chief Justice to assign the subjects to the Bench concerned. As pointed out by the Apex Court, the Chief Justice is the master of roster and it is his Lordship's prerogative to constitute Benches and to allot work. By a coincident it happened that one of the member who received the letter along with xerox copy of the Government file was allotted the work of PIL by the learned Chief Justice. The matter was placed before the Division Bench and the order of issuing notice to the Chief Secretary is passed by the Division Bench. We have already recorded above that subsequently the matter was allotted to this Bench by a speaking administrative order. In the case of AJIT D PADIVAL vs. STATE OF GUJARAT reported in 1998 (2) GLR 1182 the question was with regard to issuance of notice by the learned Single Judge, when as per the work allotted by the Chief Justice he was not to deal with the

matters of public interest. The Division Bench comprising of the then Honourable the Chief Justice Mr. K. Sreedharan & M.S. Shah, J. heard the matter and pointed out that according to the Gujarat High Court Rules 1993, Civil and Criminal Jurisdictions of the Court shall be exercised by a Division Bench consisting of two or more Judges except in cases where it is otherwise provided. Matters which are to be dealt with by single Judges are specifically enumerated in Rule 2 of the Rules. It has not conferred any power on learned Single Judge to exercise the powers of the Division Bench. The provisions contained in the Letters Patent and the Bombay Reorganization Act do not confer on a learned single Judge of this Court powers to exercise jurisdiction of the High Court in matters which are not assigned to him by the Chief justice. It is now well settled law that "Chief Justice is the Master of Roster" and has prerogative to constitute Benches and to allot work. No learned Single Judge can pick and choose the matter. This matter is placed for its disposal with appropriate orders of Hon'ble the Chief Justice. As per the allotment of the work, at the relevant time, the Bench which issued notice in the instant case was assigned the work of PIL.

###. In the instant case, it is also required to be noted that the Bench which was allotted the subject matter has issued notice, and therefore, it was competent to decide the matter and in the instant case, the Bench, in any way, after the roster was changed, is hearing the matter in view of the specific order passed by the learned Chief Justice, and, therefore, we do not find any merits in the submissions made on behalf of some of the plot holders.

###. For the reasons aforesaid, we find no merits in the contention raised by advocates on behalf of some of the plot holders.

###. It is also required to be noted that it was argued before the Court on behalf of some of the plot holders that in view of the previous orders, the Court has expressed the view, and, therefore, the same Court should not take up the matter for final hearing. What is required to be noted in the instant case is that the Court, after perusing the record, produced before it put certain questions. Can it be said that the Court while granting ad-interim relief or interim relief, has decided the matter finally at that stage? It is well known that the Courts decide the matters only after full-fledged hearing. If this submission is accepted, it would mean

that a Court which has issued notice or Rule or which has granted ad-interim or interim relief in any matter can never take up the matter for final disposal. When any Court passes any interim order, it is based on the basis of the material placed on record at the relevant time, and such matter is finally decided after considering all the documents and after hearing the parties or their advocates, and it does not mean that the Court is prejudging the issue.

###. The Apex Court in the case of P. GOVINDASWAMY AND ANOTHER vs. S. NARAYANAN AND OTHERS reported in 1987 (Supp) SCC 58 observed as under in paragraph 5 of the judgment:

> "We do not consider it necessary to reiterate that the views expressed in the course of the judgment in the interlocutory proceedings are tentative by the very nature of things. The matter will doubtless be disposed of finally in accordance with law and on the basis of the material placed before the Court in the light of the submissions advanced by the parties uninhibited one way or the other by what has been said whilst disposing of the interlocutory applications. We may also clarify that it will be open to the High Court to proceed further with the main company matter in accordance with law."

###. The Supreme Court in he case of KAIKISHAN JAGWANI AND OTHERS VS. BRITOMATICS ENTERPRISES PVT LTD. & ORS. reported in 1987 (Supp) SCC 72 held as under in paragraph 2.

> "Counsel for the petitioners expresses an apprehension that the observations made by the city civil court and the High Court in the course of the orders in question might create prejudice. We think that the apprehension is not well founded because by the very nature of things such observations are tentative observations made for the limited purposes of the interlocutory proceedings. When the question of deciding the matter on merits ultimately arises the matter would of course be disposed of with an open mind uninfluenced or uninhibited by any observations made in the course of these orders, on the basis of the evidence on record and in the light of submissions then made in accordance with law."

###. In view of the aforesaid principle, we find no merit in the contention raised by the learned counsel appearing for some of the plot holders. Mr. Vakil, learned Amicus-Curie pointed out that in the instant case, about the irregularities, publicity was given in various newspapers; not only that but the Government decided to make a detailed inquiry in to the matter and despite three officers were entrusted with the work, the inquiry could not be completed, and all efforts made by the Government to make and complete the inquiry did not result in any outcome. The contention raised is that the Court should not hear the matter and should ask some of the officers in the Government to make an inquiry. According to Mr. Vakil, this is nothing but an effort to scuttle the inquiry and the erring officers want to dodge the proceedings before the Court somehow. We find much force in the contention raised by Mr. Vakil.

##. It has been further contended that the affidavit of the Chief Secretary shows that the proceedings were pending and the Government, being employer under the powers, can find out any irregularities or illegality, which would show that the wrongdoer is not fit to be continued as government servant. According to some of them, this Court should not do this exercise. It is for the Government to take a decision. It was also contended that in the larger interest, it is necessary not to entertain such petition when a large number of matters are pending. This argument cannot be accepted. As pointed out above, by committing various illegalities, property has been obtained which was meant for altogether for a different use in the Town Planning Scheme and despite the assurance given to the Court that the plots are allotted for residential purpose to the members of society, which made an application, the same are used for different purpose. [There is suppression of material fact about allotment of three plots to the society]. This can be examined by the Court alone. It is a public duty of these officers and they are obliged to act in such a way so as to set an example on other citizens to act strictly in accordance with law.

MAINTAINABILITY OF PIL IN THE INSTANT CASE:

###. On behalf of some of the plot holders, it was submitted that this Court should not have treated this proceedings as a Public Interest Litigation.

##. Attention of the Court was invited to a reported decision of the Apex Court in the case of BANDHUA MUKTI

MORCHA vs. UNION OF INDIA reported in AIR 1984 SC 802. It was a Public Interest Litigation relating to bonded labour. The Apex Court pointed out that Public interest litigation is not in the nature of adversary litigation but it is a challenge and an opportunity to the government and its officers to make basic human rights meaningful to the deprived and vulnerable sections of the community and to assure them social and economic justice which is signature tune of our Constitution. The Government and its officers must welcome public interest litigation because it would provide them an occasion to examine whether the poor and the down-trodden are getting their social and economic entitlements or whether they are continuing to remain victims of deception and exploitation at the hands of strong and powerful sections of the community and whether social and economic justice has become a meaningful reality for them or it has remained unreality so that in case the complaint in public interest litigation is found to be true, they can discharge their constitutional obligation, root out exploitation and injustice and ensure to the weaker sections their rights and entitlements.

###. The Apex Court in the aforesaid case further observed that when the Court entertains public interest litigation, it does not do so in a cavilling spirit or in a confrontational mood or with a view to titling at executive authority or seeking to usurp it, but its attempt is only to ensure observance of social and economic rescue.

###. However, relying on the aforesaid case, it was submitted on behalf of some of the plot holders that the Court should exercise jurisdiction regarding Public Interest Litigation only in a case where there is violation of basic human rights or where fundamental rights are infringed. and not in a case where persons holding higher position are joined as respondents. This submission has no merit at all.

##. It is required to be noted that the Apex Court in the aforesaid case observed as under in paragraph 54:

> "The Court must be ever vigilant against the abuse of its process. It cannot do that better in this matter than insisting at the earliest stage, and before issuing notice to the respondent, that an appropriate verification of the allegation be supplied. The requirement is imperative in private law litigation. Having regard to its nature and purpose, it is equally

attracted to public interest litigation. While this Court has readily acted upon letters and telegrams in the past, there is need to insist now on an appropriate verification of the petition or other communication before acting on it."

##. Relying on this, it was submitted that there was no verification of the letter, and, therefore, the Court ought not to have proceeded with the matter. It must not be forgotten that xerox copy of Government File was forwarded to the Court. Before taking action in the matter, a notice was issued to the Chief Secretary. Various points which appeared to the Court on reading the file were mentioned in the order. The Chief Secretary thereupon filed his reply. There was no averment in the affidavit that the xerox copy of the file was a fraud or got-up one; Had there been any averment in the affidavit that the xerox file is a got-up record or fraud, the Court would have put an end to the proceedings on that very day. On the contrary, the averments in the affidavit revealed that the xerox copy of the file is part of the Government record. Moreover the affidavit indicated that the Government tried to entrust this matter to various IAS officers for conducting inquiry, but could not succeed. It is thereafter that the Court proceeded further with the matter. Thus it can be said that though the letter and copy of the government file was the basis for initiation of the proceedings, furtherance of the proceedings was based on sworn affidavits filed by the Government Officers. In the circumstances, there is no merit in the contention that the Court should not have proceeded on an unverified or unaffirmed letter. In the aforesaid judgment itself, the Apex Court held that:

"It will always be a matter for the Court to decide, on what petition will it require verification and when will it waive the rule."

##. We would like to reiterate here that though the proceedings were initiated on the basis of the xerox copy of the government file, the Court has proceeded further with the matter on the basis of the affidavit and other record placed on record by the respondents, and not on the basis of the xerox copy of the Government file. Documents are placed on the record by the respondents, and the Court has appreciated those documents while passing the orders, except the first order.

###. It was submitted by Mr. Vakil, learned counsel appearing as Amicus Curie that this is a case where high ranking officers were allotted plots by AUDA in flagrant violation of the rules and law. Not only that, but without authority of law, AUDA has permitted development of the plots for the purposes other than for what it was reserved in the TP Scheme, and also permitted construction of commercial premises on lands allotted for construction of residential buildings. Mr. Vakil submitted that the Court is required to consider affidavits which are placed on the record and has to pass an order. According to his submission, the Court has to decide the matter on the material which is placed on the record on affidavits, and not without verification or affidavits.

##. On behalf of the plot holders, it was submitted, relying on the decision of the Apex Court in the case of STATE OF HP vs. STUDENT'S PARENT, MEDICAL COLLEGE, SHIMLA reported in AIR 1985 SC 910 that the Court should not use PIL as a weapon, and has to use it with great care and circumspection. In that case, the High Court, while exercising powers under Article 226 in a case of ragging directed the Chief Secretary to the Government of Himachal Pradesh to file affidavit setting out what action has been taken by the State Government about the recommendations contained in paragraph 16 of the report of the Anti-Ragging Committee to initiate legislation on the subject of ragging. The Apex Court pointed out that the direction given by the Division Bench was really nothing but short of an indirect attempt to compel the State Government to initiate legislation. The Apex Court further observed that the Court cannot mandate the executive or legislature to initiate legislation and that is not a matter within the sphere of the functions and duties allocated to the judiciary. Facts of the instant case are nowhere near the facts of the case in which reliance is placed. In the instant case, there is absolutely no encroachment in the fields reserved for legislature and executive. On the contrary, from the affidavit filed by the Chief Secretary, the Court found that the Government tried to get the matter inquired through Shri P.V. Swaminathan, IAS, Shri V. Krishnamurthy, IAS, Shri P.P. Rathod, IAS, Smt. Nethra Shenoy, IAS but failed in getting the matter inquired. Moreover, reading paragraph 2.10 of the affidavit, it further revealed that the file was returned by the then Secretary to CM with a note that a representation had been made by Shri Varesh Sinha, Hon. Secretary of the Sumangalam Society to Hon CM and General Administration Department might process it and put up. Accordingly a

note was put by General Administration Dept. to close the file as nothing objectionable was found, and the then Chief Minister approved the note. Thereafter when the new Government came to power, Hon'ble Chief Minister called for the said file and the Chief Minister was of the opinion that the matter requires further consideration. The land was allotted on the price fixed on 9.12.1987 in 1990 and the Government has not been able to even get the matter investigated during 13 years. There was also violation of the provisions contained in the Gujarat Town Planning and Urban Development Act, Urban Land [Ceiling & Regulation] Act, Gujarat Cooperative Societies Act, Rules, Regulations and Bye-laws framed thereunder. It is in this situation that the Court proceeded further with the matter. In the circumstances, reliance on the aforesaid judgment has no relevance at all.

###. It was further contended, relying on the aforesaid judgment in the case of State of H.P. that the letter which was received by the Court was not forming part of the petition though it is treated as a petition. In paragraph 5 of the judgment in the aforesaid case, the Apex Court observed that :-

> "It is a highly effective weapon in the armory of the law for reaching social justice to the common man. The Division Bench was, therefore, certainly right in entertaining the two letters as a writ petition and no exception can be taken to it, but it was wholly in error in directing that these two letters on which the Division Bench acted should not be placed on he record of the proceedings and the identity of the guardian and the student should not be disclosed."

###. Thus, the action which was not approved by the Apex Court is non-placing the two letters on the record. In the instant case, the xerox copy of the entire file was before the Court and copies which were referred to in the first order, were also supplied to the respondents. Over and above this, the copies of all subsequent affidavits and documents filed by deponents were also served on all the respondents. In the instant case, it was known to the respondents viz. plot holders as well as the authorities as to how they have acted. It was forming part of the record and it was known to both the sides including the Government. Therefore, the grievance is baseless and deserves to be rejected.

###. The Apex Court in the case of STATE OF WEST BENGAL vs. SHIVNANDA PATHAK reported in AIR 1998 SC 2050 pointed out as under in paragraphs 23 and 24:-

> "23. All judicial functionaries have necessarily to have an unclinching character to decide a case with an unbiased mind. Judicial proceedings are held in open court to ensure transparency. Access to judicial record by way of inspection by the litigant or his lawyer and the facilities of providing certified copies of that record and factors which not only ensure transparency but also instill and inspire confidence in the impartiality of the court proceedings.
>
> 24. Unlike suits, proceedings under Article 226 of the Constitution are not conducted strictly following the provisions contained in the Code of Civil Procedure but are held in accordance with the Procedure devised by the High Court itself under which a fair hearing is provided to the parties concerned before a decision is rendered. In other words, principles of natural justice are observed strictly in letter and spirit. One of the requirements of Natural Justice is that the hearing should be done by a Judge with an unbiased mind."

###. In the instant case, there is no grievance that documents were not supplied or that hearing is not given. Principles of natural justice have been followed and in our view, therefore, we find no merits in the submissions made on behalf of some of the plot holders.

###. This Court is not trying to widen the scope of PIL but within the parameters as pronounced by the Apex Court in various cases, the Court proceeded with the matter. It is not necessary that PIL can be entertained only if there is a grievance against the authorities exploiting the poor class. When the persons who are exercising their powers and the Government or the local authorities which are required to look after the interest of the people at large is found to have acted contrary to the provisions of law, certainly the Court can look into the matter. We are required to state that in the instant case, three high-level officers could not complete the inquiry despite delay. It appears to us that the authorities have acted half-heartedly, and none has completed the inquiry. We would have requested the Chief Secretary to make an inquiry, but unfortunately, in the

instant case, the Chief Secretary himself is a person who became a member of the Society and got the plot, though at the relevant time he was neither residing in Ahmedabad nor at Gandhinagar. It is in this view of the matter, the Court decided to proceed further with the matter. It was also made clear to us that most of the officers were allotted plots at Gandhinagar at concessional rates.

###. The Apex Court in the case of PEOPLE'S UNION FOR DEMOCRATIC RIGHTS vs UNION OF INDIA reported in AIR 1982 SC 1473 held as under in paragraph 2 of the judgment:

> "The Rule of Law does not mean that the protection of the law must be available only to a fortunate few or that the law should be allowed to be prostituted by the vested interests for protecting their upholding the status quo under the guise of enforcement of their civil and political rights.

###. In paragraph 2, the Apex Court further held as under:

> "The State or public authority which is arrayed as a respondent in public interest litigation should, in fact, welcome it, as it would give it an opportunity to right a wrong or to redress an injustice done to the poor and weaker sections of the community whose welfare is and must be prime concern of the State or the public authority".

###. The contentions with regard to technicalities are also required to be negatived in view of the following observations made by the Apex Court in paragraph 17 of the judgment in the case of S.P. GUPTA AND OTHERS vs. PRESIDENT OF INDIA AND OTHERS reported in AIR 1982 SC 149:

> "It may therefore now be taken as well established that where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal

burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the Court for relief any member of the public can maintain an application for an appropriate direction, order or writ in the High Court under Art. 226..."

##. It is required to be noted that people as a class residing in the locality have been deprived of neighbourhood centre by AUDA. The people who are residing in the locality are adversely affected. The action of AUDA and the allottees would have been tolerated, if the plots allotted were exclusively used for the residential purposes of the allottees and alternative plots were earmarked for neighbourhood center. However, in the present case, even that canon of tolerance has been broken inasmuch as that some of the allottees have constructed multistoreyed flats, some have sold out the plots at exorbitant margin, some have constructed multistoreyed shops and as observed by us above, none except one is using it for exclusive residential purpose. Since we have already dealt with the nature of construction hereinbefore we do not repeat it here. By this process, AUDA could not take any action and the learned counsel fairly stated that on the record of the AUDA plots have been allotted to the Society in whose favour the resolution has been passed. Infact, there is an affidavit on record to this effect. Naturally, people as a class would not be in a position to raise any grievance. What is complained of in the instant case is a specific disadvantage suffered by the people in the locality by allotting plots reserved for public housing and neighbourhood center to a selected few highly influential bureaucrats who have not used the sub-plots leased to them for residential purpose and it is in this spirit that the Court has entertained the writ petition and we reiterate that except for issuing notice to the Chief Secretary, this letter has never been used for passing any further orders, and all further orders are passed on sworn affidavits and documents placed before the Court by the respondents.

###. As regards technicality, the Apex Court pointed out as under in the same paragraph 17:

"But it must not be forgotten that procedure is but a handmaiden of justice and the cause of

justice can never be allowed to be thwarted by any procedural technicalities. The Court would therefore unhesitatingly and without the slightest qualms of conscience cast aside the technical rules of procedure in the exercise of its dispensing power and treat the letter of the public minded individual as a writ petition and act upon it. "

###. This is not a case where the Court is moved by a person who has grievance against the plot holders. As copy of an entire Government file was taken, and as it would not have been possible for an outsider to have access to it, it is justified to presume that the same is done by someone in a Government Office, who might have been pained at the gross injustice done to the general public in disposing of plots reserved for public housing and neighbourhood center to a select few influential persons in the Government and the manner and mode thereof and use thereof contrary to the intention and promises held out for residential purpose. As the Government itself was of the opinion that the matter requires a thorough inquiry but was helpless even after entrusting the file for investigation to senior officers to get the result of inquiry for almost 13 years, the Court thought it fit to proceed further.

###. The Apex Court in paragraph 18 has further pointed out as under:

"But there may be cases where the State or a public authority may act in violation of a constitutional or statutory obligation or fail to carry out such obligation, resulting injury to the public interest or what may be conveniently called as public injury as distinguished from private injury. Who have would standing to complaint against such act or omission of the State or public authority? Can any member of the public sue for judicial redress? Or is the standing limited only to a certain class of persons? Or there is no one who can complain and the public injury must go unredressed. To answer these question it is first of all necessary to understand what is the true purpose of judicial function. This is what Prof. Tho states in his book on "Locus Standi and Judicial Review".

##. It is required to be noted that so far PIL is concerned, the Court may entertain, where the State or public authority acts in violation of statutory duty or failure in carrying out public duties resulting in injury to the public at large. Statute imposes duty on the officers for the benefit of the people to see that benefits which otherwise accrue to the member of the public is not withdrawn or state makes provision for the benefit of the people at large. When there is no means to enforce or there is no remedy for the breach committed by the public authority, then it can be said that the Government or its department or public authority has acted in violation of the law, as a result of which large number of people are adversely affected. In the absence of censorship of indecent portions from a film, viewers especially the youths gets corrupted. The State may impose certain restrictions by way of censorship. If the State has failed in imposing censorship and if anyone brings it to the notice of the Court, the Court has to examine the nature of the film, and whether it is likely to corrupt the youth or not. There may be action of the public authorities causing injuries to the persons and public at large. It is in such cases the question of locus standi may be required to be considered.

###. It is also required to be noted that this is not a case where there is a complaint about infringement of individual right. It is not a case that an individual is complaining that he is adversely affected on account of the action or inaction on the part of the authorities. It is known that the function of the judiciary is primarily to deliver justice by confining the legislative and executive organs of the Government within their powers. Where the prime aim of the judicial process is to protect individual rights, it is concerned with the regularity of law and administration. It is required to be noted that in the instant case, the Court has not passed any orders except issuance of notice on the basis of the letter and government files (xerox) received by it, but the Court, after perusing the affidavits filed on behalf of the Government, AUDA and others and the records placed along with it, has passed various orders. We would again like to recite the sequence so as to avoid any confusion. On the basis of the letter along with zerox copy of the government file addressed to one of the Judges, the papers were placed before the Court which was assigned the matters of PIL and the Court issued notice to the Chief Secretary to elicit the truth. Subsequently notice was issued to other respondents including AUDA and the State Government. Public Notice was also issued. In the instant case, there was allotment of plots and

construction of buildings on the plots in violation of the rules, regulations and byelaws of AUDA. In view of the public notice, some of the occupiers have appeared before the Court. In view of this, all the parties who are likely to be affected adversely are before the Court. Therefore, we find no substance in the contentions raised on behalf of some of the plot holders.

###. About the procedure followed, it was pointed by that these are special proceedings to which Civil Procedure Code does not apply. Mr. Vakil drew our attention to the decision in the case of BABUBHAI vs. NANDLAL reported in AIR 1974 SC 2105 wherein the Apex Court pointed out that the words "as far as it can be made applicable" in Sec. 141 of Civil Procedure Code make it clear that in applying the various provisions of the Code to proceedings other than those of a suit, the Court must take into account the nature of these proceedings and the relief sought. The object of Article 226 is to provide a quick and inexpensive remedy. If the procedure of a suit had also to be adhered to in the case of writ petitions, the entire purpose of having a quick and inexpensive remedy would be defeated. A writ petition under Article 226 is essentially different from a suit and it would be incorrect to assimilate and incorporate the procedure of a suit into the proceedings of a petition under Article 226. The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right of relief, questions of fact may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law. When the petition raises complex questions of fact, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute should not appropriately be tried in writ petition, the High Court may decline to try a petition. If, however, on consideration of the nature of the controversy, the High Court decides, that it should go into a disputed question of fact and the discretion exercised by the High Court appears to be sound and in conformity with judicial principles, the Court can finally dispose of the petition.

###. Mr. Vakil further contended that it is the duty of the Court to consider the record which are placed before it and to arrive at a conclusion and for that purpose, according to Mr. Vakil, a fair opportunity has been given to all the parties, and after hearing all the parties, the Court may pass an order.

###. Mr. Vakil, learned counsel invited our attention to the judgment in the case of ASHWANI KUMAR vs. STATE OF BIHAR reported in (1996) 7 SCC 577. Mr. Vakil read out paragraphs 29, 30 and 32 of the judgment. The Apex Court pointed out that with the aid of principles of natural justice, the Courts preserve the rule of law. The Courts have to examine in each case the balance of fairness, whether the violation of the principle of audi alteram partem visits with irremediable civil consequences and its incursion on administration, if action is invalidated. The Court further pointed out that no set of rule or standard of universal application can possibly be made for application to all sets of cases. Courts exercise their power of judicial review with circumspection to weigh in balance of fairness of action. According to the submission of Mr. Vakil, when the Court has adopted a procedure to decide a petition based on the affidavits and documents produced on record and after hearing the parties, the principles of natural justice is followed, and fingers cannot be raised at the procedure followed by the Court.

##. According to Mr. Vakil, the subject matter of this petition is also very much relevant. After referring to certain orders passed by the Government and the audit reports of the Registrar, he submitted that the matter pertains to allotment of land by AUDA. Three Societies having similar names are in existence. He submitted that AUDA disposed of lands reserved for some other purposes and that too without holding a public auction. He further submitted that about enrolment of members of the Society, allotment of plots to the Society, identity of allottees, area of land allotted, nature of construction, use of the constructed premises, legality of permission granted for change of use and various other relevant questions are required to be considered in the light of the relevant laws. He also submitted that the violation of the solemn assurance given on behalf of the Society in the previous proceedings is also required to be considered. He further submitted that the question of transfer of property contrary to the law is also involved in this case. He further submitted that in any event, the development of the plots itself is in contravention of the Development Regulations and that is also required to be considered and he submitted that the allottees have transferred the plots and carried out constructions contrary to the Regulation.

###. There is a transfer of property by way of sale or property is given on rent. The distribution of the plots is contrary to the provisions contained in the ULC Act.

Keeping in mind all these aspects, even the Chairman on 16/07/1987 made an order to process the application of the society before the board for consideration of the conditions, six in numbers. One condition was prohibiting the sale for five years after purchase. Other condition was that the construction was to be completed within a period of two years as per the regulations and so far as size of the plot is concerned, that will be of 150 sq.mtr. as the society wanted tenement to be constructed. Keeping in mind, the provisions contained in the ULC Act and the conditions imposed by the Central Government, these aspects were expressly stated including by Mr. Prasad who has put up a note like this. The plot which is being put to the actual use is contrary to the building regulations. This bundle of facts clearly reveals that there is misuse of powers, fraud and misrepresentation.

###. Mr. Vakil invited our attention to certain events from the record. Mr. Vakil, learned counsel invited our attention to the affidavit dated 10.11.2000 filed by the Chief Secretary at the initial stage in reply to the notice. He pointed out from the said affidavit that in May 1993, there was a news item about irregularities and favouritsm in allotment of plots. Thereafter, on 3rd July 1995, the then Additional Chief Secretary examined the case and submitted a detailed note of the observations on the various irregularities committed by Sumangalam Societies. Thereafter, Hon'ble Chief Minister took a decision on 12.7.95 to entrust the matter to Shri P.V. Swaminathan for a detailed inquiry and he submitted his preliminary Inquiry Report into the affairs of the Group of the Societies on 29.9.1995. Since he was retiring w.e.f. 30.9.1995, he expressed that it was not possible for him to proceed further with the inquiry. Thereafter, the Hon'ble Chief Minister decided on 2.5.96 to entrust the inquiry to Shri V. Krishnamurthy. However, Shri Krishnamurthy also could not complete the inquiry before his retirement. The Hon'ble the Chief Minister thereafter decided on 6.11.96 to entrust the inquiry to Shri P.P. Rathod but he mentioned that he was not willing to accept the work. Thereafter, on 29.4.1997 the Chief Secretary recorded a note and suggested that the inquiry may be entrusted to Smt. Nethra Shenoy. However, the file was returned by the then Secretary to the Hon'ble the Chief Minister with a note that the representation had been made by Shri Varesh Sinha, Hon. Secretary of the Sumangalam Society [Respondent No. 4] to the Hon'ble the Chief Minister and General Administration Department might process it and put up. On 29.7.1997, General Administration Department suggested

that the matter deserves to be closed as nothing objectionable was found. Mr. Vakil vehemently submitted as to what was the necessity for Mr. Varesh Sinha to suggest for closing the file when the Government was seriously thinking to make an inquiry through an independent officer? The affidavit further states that the file was again called for on 15.7.1998 and it was submitted to the Hon'ble the Chief Minister on 6.8.98 and the Hon'ble Chief Minister directed the Chief Secretary to discuss the case with him. Principal Secretary to the Hon'ble Chief Minister submitted file to the Hon'ble Chief Minister and he recorded on 10.7.99 that the seven points referred to in the Chief Secretary's note dated 6.8.1988 require careful study and therefore these points should be studied and details to be submitted to him. The Principal Secretary to the Chief Minister examined the points and the file was again put before the Hon'ble Chief Minister on 31.8.2000. After careful study, the Hon'ble Chief Minister issued orders on 15.9.2000 that the facts of the case required to be ascertained before giving any final order in the matter and the file was sent to the Chief Secretary. Thus the affidavit explicitly discloses that right from the year 1993, the Government was trying to get the inquiry conducted but for one or the other reason, it could not be completed. We need not state the reasons for this in so many words, but suffice it to say that the inquiry could not be completed inspite of the fact that Senior IAS officers and the Hon'ble the Chief Minister were all of the opinion that the matter requires a thorough investigation, but it remained only as a wishful desire and could not be translated into action.

###. In the complex state of affairs aforesaid, we have absolutely no doubt in our mind that this PIL is maintainable.

AUDA'S RESOLUTION - CAN IT STAND THE TEST :

###. With a view to point out that AUDA has taken the incorrect decision, Mr. Vakil learned Counsel pointed that whether this decision is taken by majority or whether it was a unanimous decision, is not clear. Reading the Minutes, it appears that there were some objections. Law requires that decision must be by majority. With a view to show that the decision is taken by majority, nothing is indicated. There is nothing to indicate as to how many members were present in the

meeting; how many objected and how many consented or whether it was a unanimous; Whole Minutes are not placed before the Court. At page 581 only decision is forwarded. It is also required to be noted that it was addressed to Secretary, Sumangalam Co=Op. Housing Society, C/o. Managing Director, Hindustan Tractors Corporation Ltd., Vadodara Shri C.J. Jose. Thus decision was taken to allot parcel of land to Sumangalam Co-Op. Society which made an application earlier.

###. Mr. Vakil submitted that there is nothing to indicate as to what price was determined by the Board of AUDA. The resolution at page 580 if read, it is clear that there is no reference to the determination of price. He posed a question as to whether a Development Authority can take a decision in this manner? How members would know what price was determined, more particularly when development rights are indicated. It is thus clear that price was not determined by the Board itself but subsequently executive officer determined the price.

###. Though the resolution does not reflect the price determined first, in a letter at page 581 it was shown that thereafter price was indicated as if the price was determined by the Board in its meeting on 19.1.1990 at page 580. Mr. Vakil thus pointed out that AUDA which was dealing with public property, has not acted with bonafides and has acted as if the property of its own is to be disposed of, and has disposed it of in violation of the norms.

REPORT OF AUDITORS OF RESPONDENT No.2 - ITS RELIABILITY:

###. We have indicated earlier that the Society which was registered at Gandhinagar (Resp. No.2) at page 390 to 392 gave names of 94 members, in all having contributed Rs.23,500/- at the rate of Rs.250/- each towards share allotment. At page 353, Ms. Gauri Kumar has placed on record that in all the members contributed a sum of Rs.6,30,000-00 and Rs.35,000/- was in suspense account. Respondent No.2 paid an amount of Rs.6,30,000-00 to AUDA. It is very much surprising to note from the Auditor's report placed on record along with the affidavit of Ms. Gauri Kumar at page 406 that for the year 1988-89, amount of Rs.6,30,000/- was received towards land contribution and there was Rs.35,000/- in the suspense account. For the year 1989-90 also, these amounts are shown. In the year

88-89, it is also indicated that a sum of Rs.6,65,000/- was paid to Sumangalam Society, Bodakdev (Resp.No.4). That figure is also reflected in 89-90. Not only that, but a resolution was made to the effect that on 29.6.1989 from Savings Bank Account an amount of Rs.6,65,000/- was paid to Sumangalam Co-Op. Society, Bodakdev (cheque No. 660044). It is required to be noted that in 1989, there was no such Society registered at Bodakdev. Hence, there was no question of making payment to this Society. Again at page 581, we find receipt issued by AUDA dated 16.6.89 indicating that a sum of Rs.6,65,000/- was received from Sumangal Co-Op. Housing Society vide cheque No. 660044 dated 8.5.1989. The cheque was drawn on Ahmedabad District Co-Op. Bank, Patnagar Branch.

###. It is very surprising to note that Chairman/Secretary of Sumangal Co-op. Ltd., Gandhinagar submitted rectification report for the period from 10.10.1986 to 30.6.1995 (page 409 and 410). At page No. 410 Sl. No. 3 it is stated that on 29.6.1989 from the account of society [Ahmedabad District Co-Op. Bank Ltd.] a sum of Rs.6,65,000/- vide cheque No. 66004 was drawn and was given to Sumangalam Co-Op. Housing Society, Bodakdev. This is a false statement made in the rectification report by the Society.

SHELTER OF STARRED ASSEMBLY QUESTION:

###. On behalf of the Society, a plea is taken that a starred question was asked in the Legislative Assembly and as even the Assembly has discussed this issue and found nothing wrong in the allotment of the land, nothing further is required be done in this matter. This plea is also not available to the Respondent No.4 Society because even before the Assembly the full facts have not been disclosed to the effect that the respondent No.4 which has not applied for and which has not been allotted the land, and which has not paid the amount, has taken possession of the land. On the contrary, the high handed way in which the matter was placed before the Assembly by not disclosing the full, true facts, may amount to a contempt of the Assembly as well and degrading the dignity of the Assembly, more particularly when the respondent No.4 is taking shelter of the proceedings in the Assembly.

TRANSFER OF PROPERTY - DUTY OF TRANSFEREE & CONSEQUENCE

OF FAILURE:

###. We have heard the learned advocates for occupants of the flats constructed on the plots allotted in the respondent No.4 Society, who have filed affidavits along with the documents. Their contention is that they are the persons who have purchased the property with bonafides, and, therefore, they should not be disturbed.

###. So far as conveyance is concerned, it is required to be noted that the seller cannot transfer a better title than what he has. If the seller has no good title, he cannot pass a better title. If the seller is not permitted to transfer the title permanently, execution of some documents would not amount to a legal transfer. In the instant case, respondent No.2 Society applied for plots and the AUDA allotted at a concessional rate to it. However, the Respondent No.4 occupied the same and executed lease deed. AUDA allotted the plots and in the petition, reply was filed by Secretary of Resp. No.2 Society making clear statement that the plots will be used for the purpose of residence only by the members, the same cannot be transferred. The persons purchasing the property subsequently purchased it in view of the attached condition to it either by way of agreement or order of the Court. The seller may not be interested in disclosing the facts which are not favourable to him. He may suppress the facts that the property is to be used only for the purpose of residence by the persons to whom it is allotted and the Court upheld the allotment on condition of using the plots for the residence by the members, but when a purchaser is purchasing the property, it is for him to make necessary inquiries. It is essential that he should make an inquiry as to title or interest on the date when the transaction was made in his favour. A subsequent purchaser to save his interest has to make inquiry about the nature of possession and title under which the present occupier was continuing in possession on the date of purchase of the property. The Apex Court in the case of R.K. MOHAMMED UBAIDULLAH vs. HAJEE C. ABDUL WAHIB reported in AIR 2001 SC 1658 held that with reference to subsequent purchaser it is essential that he should make an inquiry as to title or interest of the person in actual possession as on the date when the sale transaction was made in his favour. The actual possession of a person itself is deemed or constructive notice of the title, if any, of a person who is for the time being in actual possession thereof. A subsequent purchaser has to make an inquiry as to further interest, nature of possession and title under which the

person was continuing in possession on the date of purchase of property. In view of section 19(b) of the Specific Relief Act and definition of `notice' given in S.3 of the Transfer of Property Act read along with the explanation II, the subsequent purchasers are not bonafide purchasers in good faith for value without notice of the original contract. They were required to make inquiry as to the nature of possessor's title or further interest if any of the plaintiff over the suit property at the time when they entered into sale transaction notwithstanding they were already aware that the plaintiff was in possession of the property as the tenant. What is material is the inquiry at the time when subsequent sale transaction was entered into.

###. In the aforesaid case, the Apex Court also considered the case of MIMMIDI REDDI PAPANNAGARI YELLA REDDY vs. SALLA SUBBI REDDY reported in AIR 1954 Andhra 20 and quoted, with giving emphasis the following portion from the said judgment:

> "Where there is a tenant in possession under a lease or an agreement, a person purchasing part of the estate must be bound to inquire on what terms that person is in possession .... that a tenant being in possession under a lease when an agreement in his pocket to become the purchaser those circumstances altogether give him an enquiry repealing the claim of a subsequent purchaser who made no inquiry as to the nature of his possession".

###. It is the duty of the subsequent purchaser to inquire from the previous purchaser as to the character of his possession at the time when the subsequent sale transaction was entered into. In the instant case, none has inquired about the right and title but have relied on some certificates or some bank certificates. We find that in no documents, it is stated that they have examined the condition of lease deed which prohibit transfer of any kind. Thus, the burden is on the purchaser. They are required to take care.

###. In the case of PURNENDU NATH vs. HANUT MULL reported in AIR 1940 CALCUTTA 565, a Division Bench of the Calcutta High Court held as under in page 567:

> "We cannot accept the respondents' contention that they must be taken to have acted in good faith and with reasonable care simply because they entrusted the inquiry into title to a

solicitor whom they trusted and only completed the transaction after they were told by their solicitor that every thing was right. A purchaser from the ostensible owner would in that case be able in every case to defeat the title of the real owner by simply employing a solicitor or lawyer no matter whether the latter discharged his duty properly or not."

##. In the case of CHANDI PROSAD vs. GANDHARA SINGHA reported in AIR 1949 CALCUTTA 666, the Calcutta High Court had an occasion to examine section 41 of the Transfer of Property Act. The Court pointed out that transferee must have taken reasonable care to ascertain the power of the transferor. In paragraph 38 the Court held that:

"The question whether the action he took amounts to 'taking reasonable care' to ascertain that the transferor had power to make the transfer is a question of law, and requires our careful consideration."

###. Ultimately, the Court held that the transferee has to take reasonable care to ascertain that his transferor had power to transfer.

###. In the case of KHUSHALCHAND vs. TRIMBAK reported in AIR 1947 BOMBAY 49, in paragraph 10 the Bombay High Court pointed out that section 41 is an exception to the general rule that a person cannot convey a better title than what he himself has in the property and hence condition set forth in that section must be strictly fulfilled before its benefit can be available to the transferee. The findings of the lower appellate Court is recorded in paragraph 10 of the judgment, as under:-

"According to the finding of the lower appellate Court on this point, defendant 3 looked into the Record of Rights and was satisfied that the name of defendant 1 alone was entered as the owner and occupant of the land and that the rights of none else were shown there and that after making inquiry with the village officer he was satisfied that she had power to mortgage the land. But he did not inquire from whom defendant 1 had purchased the land. He did not take a search of the record in the Sub-Registrar's office nor did he make any inquiry as to what rights Chintaman possessed when he sold the land to defendant 1."

###. The Court in paragraph 11 held that every person acquiring any immovable property must be deemed to have notice of other previous transactions relating to the property.

###. In paragraph 11, the Court quoted the following passage from the judgment reported in 35 BOM 342:-

> "A purchaser of property is under no legal obligation to investigate his vendor's title. But in dealing with real property, as in other matters of business, regard is bad to the usual course of business; and a purchaser who wilfully departs from it in order to avoid acquiring a knowledge of his vendor's title is not allowed to derive any advantage from his wilful ignorance of defects which would have come to his knowledge if he had transacted his business in the ordinary way".

###. A Division Bench of the Patna High Court in the case of RADHA RAI vs RAM REKHA reported in AIR 1964 PATNA 144 pointed out that the transferee of immovable property may be fastened with the constructive notice of any prior transaction affecting the title of the transferor, if he wilfully refrains from making any inquiry in order to avoid acquiring knowledge of the transferor's title or if he does not make any enquiry when the circumstances are such as would lead a prudent and reasonable person to embark on an enquiry regarding the title of the transferor.

###. In paragraph 4 the Court examined the definition of 'notice' in section 3 of the Transfer of Property Act and we reproduce the following :-

> " 'a person is said to have notice' of a fact when he actually knows that fact, or when, but for willful abstention from an inquiry or search which he ought to have made, or gross negligence, he would have known it".

###. Thus, it is necessary to examine the title so as to ascertain the nature of claim of the person making while transferring the property and if he is not making such inquiry then he is doing so at his own risk. It is bounden duty of the subsequent transferee to inquire from the party about his title and the nature of his possession before he can be a held to be bonafide purchaser for value.

##. Thus it becomes very clear that one is required to examine the documents by which the property was transferred by AUDA to the allottee. One has to examine as to whom the plots were allotted. Without examining if the certificates are obtained or reliance is placed, benefit cannot be extended based on such certificates.

###. In the instant case, subsequent purchasers have not inquired from AUDA as to under what conditions the plots were transferred in favour of the allottees by the Society; whether the Society has granted permission to transfer by passing a resolution to that effect, more particularly when the plots were allotted to a Co-Operative Society for construction of residential premises for its members. In the absence of these enquiries, it cannot be said that proper inquiries were made. It is difficult to say that in the instant case, subsequent purchasers took reasonable care. When there was a lease deed, it was incumbent on the subsequent purchaser to examine the lease deed and inquire from the lessor about the conditions of the lease deed. When the Society has not permitted and the lessor has not permitted the transfer, it cannot be said that reasonable care has been taken by inquiring from the Society or the authorities.

###. Thus, from the aforesaid, it appears that the persons were required to make necessary inquiries before purchasing the property, and having failed to make inquiries, it cannot be said that they are bonafide purchasers. It is for them to discharge the burden. In some cases, even sale deed are not executed and merely on agreements to sell possession is parted with and, buildings have been erected. In such cases, there is no legal and proper conveyance even.

AFFIDAVITS OF RESPONDENTS:

[###. Mr. A.Prasad filed an affidavit in this Court in this matter, which is at page 778 onwards on 06/01/2001. He became a member sometime in the year 1989-90. He has stated that he was allotted Sub-Plot No. 25 of Final Plot No. 695 of Town Planning Scheme Bodakdev No.1-B, admeasuring approximately 329.02 sq.mtrs. He has stated that by sanad dated 07/02/1991, he was allotted Plot No. 257 in Sector No.1, Gandhinagar admeasuring about 330 sq.mtrs by the Government of Gujarat. The said plot was given at a concessional rate and a consideration of Rs.79,000/- was paid. He has further stated that he has constructed residential accommodation on the said plot and uses the same for the purpose of residence. He has

stated that the plot allotted at Sumangalam Cooperative Society has been utilised by him for his personal use. He has constructed a building of three floors plus basement and has stated that he is in exclusive occupation of the building. He has stated that he is running two shops on the ground floor of the building. Thus, it is clear that the use of the building is for commercial purpose. He has given an undertaking to the effect that in the event of coming to the conclusion by the Court that the activities of selling flowers and tyres from the two shops on the ground floor are in violation of the provisions of law, he shall forthwith cease such use and bring it in conformity with the law as required by the Court.

###. So far as his position with regard to the role played by him as a Chairman of AUDA is concerned, he has stated that he was the Chairman of AUDA between 16/07/1986 to 25/04/1988 and between 06/04/1990 and 30/11/1990. He has relied upon paragraph - 16 of the Judgement for the purpose of stating that the Division Bench has found his conduct to be absolutely blameless. It is required to be noted that after he became the Chairman of AUDA, what has transpired has not been stated before the Division Bench. He has not referred to the fact that he was a member of the Cooperative Society, which was registered first at Gandhinagar. Record makes it clear that he actively participated for that society also. Thus, knowing full well that he was a member of the Cooperative Society at Gandhinagar, he became a member in other Society at Ahmedabad.

In his affidavit, he has kept mum about the existence of different Societies though he was a member of such Societies. As pointed out by the Resident Deputy Collector and on the basis of other material which is produced on record by the other respondents from pages 276 to 356, it is clear that Shri A. Prasad was the member of the respondent no. 2 Society.

###. Shri K. V. Bhanujan, the then Chairman of the New Sumangalam Housing Society Ltd. - Respondent No. 3 has placed on record relevant material and from the same, it is clear that Shri Prasad was also a member of the Society Respondent No. 3 at Bodakdev. Ms. Gauri Kumar has filed an affidavit which is at page 356 and from the said affidavit, it is clear that Shri Prasad was a member of the Society, Respondent No. 2 registered at Gandhinagar. The then Chairman Shri Prasad, AUDA received a letter, which was addressed by Shri C.J.Jose, President of the Society, Respondent No. 2. He himself

has made a note in the margin, which we have discussed in earlier part of the judgment. There is further correspondence placed on record, which is at pages - 446, 447, 448, 449 and 450. Page 451 is the possession receipt, which is signed by the Secretary of Sumangalam Cooperative Society. Thus, A. Prasad was very well aware that the Society namely the Society registered at Gandhinagar i.e. respondent no. 2 submitted an application and not respondent no. 4. Not a single letter addressed by respondent no. 4 - Society is produced on record either by AUDA or by the Society Respondent No. 4 itself and it has been fairly stated that no application has been made by respondent no. 4 Society. In view of this voluminous record, it is clear that Shri Prasad was aware about the existence of different Societies. He was aware that respondent no. 2 - Society submitted an application and that he was a Chairman of AUDA and subsequently he has not taken any action knowing full well that possession is given to respondent no. 4 - Society and not to respondent no. 2. This speaks a lot about his conduct. AUDA has not placed any material before the Court in this regard, which it had produced before Division Bench of this Court. It is the case of the AUDA that possession was given to the Society which submitted an application i.e. respondent no.2 and not respondent no. 4 and in view of this voluminous record, his affidavit cannot be accepted.

###. AUDA allotted the lands to the society registered at Gandhinagar, as made clear by AUDA. [It is specifically stated that the society which made an application earlier, was allotted the plots.] Therefore, AUDA did not allot the plots to the society registered at Ahmedabad [Bodakdev]. But it is during the tenure of Mr. A.Prasad as the Chairman, the amount was received on 30/05/1990, for which receipts are issued and the same are produced at pages 583 and 584. On 01/06/1990, possession was handed over to Shri Jagadeesan, which is clear from possession receipts [pages 585 & 586]. Was this Chairman not aware at the relevant time that the society has taken possession? If the land was allotted to the society registered at Gandhinagar, how the possession was taken by the society registered at Ahmedabad is a crucial question and it could be done only if Mr. A.Prasad, who was the Chairman of AUDA, was a party to this. Even case of AUDA before the Court is that possession was given to the society registered at Gandhinagar. Mr. A.Prasad was the Chairman of AUDA at the relevant time and being the Chairman, possession was taken by the society registered at Ahmedabad and using the similar name, an advantage is taken by the office

bearers of the Society as well as the then Chairman of AUDA. Thus, it is clear that role is played by Mr. A.Prasad, who was the Chairman.

###. Shri Jagadeesan, who has filed the affidavit [page 118 onwards] has not disclosed about the fact that he was also a member of the society registered at Gandhinagar. He has also not disclosed the fact that he was a person to whom the land was allotted by the Government at Gandhinagar.

###. Respondent No. 8 Shri S. Jagadeesan (Page 118) has filed affidavit and has come out with the version that in December, 1991, Plot No. 7 admeasuring 343.55 was allotted at Rs. 3,01,583.00.Similarly, Mr. M.Sahu was allotted Plot No. 6. They have come out with the version that his wife Mrs. Urvashi Jagadeesan and Shri Jagadeesan and Shri M. Sahu and his wife are in possession of plot nos. 7 and 6 of Final Plot No. 694 in Sumangalam Cooperative Housing Society Ltd., Bodakdev and merger of the plots was approved by AUDA on 18.2.93. On 3.8.94, Chief Executive Officer of the AUDA gave clearance certificate. Plan was approved on 18.10.94 consisting of basement for Safe Deposit Vault for Bank, a ground floor admeasuring 274.68 sq. mts. for bank/hall, first floor admeasuring 256.88 sq. mts. for hall and second floor admeasuring 185.83 sq. mtrs. for two residential units. Thus, at the initial stage, they took the plots for their residential purpose, carried out construction for the purpose of residence but for the purpose of earning income, rented out of this property. Had it been the intention that purchasing the plots was for the purpose of residence, they would not have carried out the construction in the manner narrated hereinabove. Requirement for residence is falsified by the fact that the construction is carried out at the inception for commercial purpose and that Shri Jagadeesan was already allotted plot no. 543/2 in Sector No. 8 at Gandhinagar at concessional rate in the year 1990 which is clear from the record at pages 626 to 723.

###. Resident Deputy Collector, Gandhinagar by filing affidavit has pointed out through the annexures these details. Not only that, but the affidavits filed by these officers are also placed on record. Plots were allotted for the purpose of residence at Gandhinagar and the record reveals that Shri Jagadeesan is not occupying his house at Gandhinagar but he has rented his house situated at Gandhinagar. Thus, it is very clear that at both the places, for the purpose of earning public property is purchased/taken on lease at a throw away

price. The government has forgotten the mandate of the Constitution. The government functions through the Executive Officers who belong to cadres of IAS, IPS etc. and it is these officers who have acted in the manner so as to see that the mandate of the Constitution is not fulfilled. Not only that, but they have acted with a view to gain financial benefits. Shri Jagadeesan has come out with the version that he paid the amount required and building use permission was granted on 29.10.94. Building use permission is granted and under the guise of this permission, it is highly improper to say that AUDA has permitted the use of commercial complex. When an application was made for the purpose of residence and it was granted for the purpose of residence, the property cannot be put to any other use than the residence. Word "residence" is defined in the Act itself which we have discussed earlier. Even the Division Bench while passing the order specifically held that the plots are to be used for the purpose of residence. Meaning of the residence cannot be expanded beyond the one defined in the Act. The word "residence" in the GDCR apply to the land which is reserved for residential purpose and which belongs to individuals, i.e., free hold land. When it is given to a Cooperative Society with certain directions indicated in the Regulations or conditions, the property cannot be used in breach thereof and those who have acted in breach must be dealt with strictly. Shri Jagadeesan has relied upon the opinion about which we have discussed earlier and therefore, no further discussion is required at this stage. It appears that this officer is under the misconception and that is so because he has used the property for the purpose other than residence. He has come out with the version that the second floor has not been constructed for the purpose of residence, meaning thereby, the property is put to commercial use for the purpose of earning income only. AUDA has shown special favour to this officer and why no action is taken by the AUDA is not explained till this date. We may point out that only after issuance of process, the AUDA has issued notice to this officer. Shri Jagadeesan has come out with the version that an amount of Rs. 5,30,894/= was paid for change of user. We have indicated earlier that in view of the reported judgment of the Apex Court which we have discussed earlier, the AUDA had no authority to collect such charges and could not have permitted the change of user when the land was given at a throw away price for the purpose of residence only. Reference to starred question is out of context. It is this officer who addressed a letter to AUDA as a Secretary of respondent no. 2 Society and subsequently after forming

new Society after the land was handed over to respondent no. 2 came out with the case that possession was handed over to Respondent N.4. Therefore, knowing full well these aspects, if he is stating about the starred question, it is required to be stated that the government officers are supplying the information for making statement. It appears that everyone was made to believe that the land was given to respondent no. 2 - Society. He has made a reference to the judgment of the Division Bench about which in earlier part we have referred. However, he has nowhere stated before the Division Bench earlier that he represented respondent no. 4 - Society and not respondent no. 2 - Society. He has come out with a version that rule of res judicata will apply. However, he has forgotten the fact that when the judgment is obtained by misleading the Court or by suppressing the material fact, the principal of res judicata would not apply.

###. He has come out with a version that the land in question was allotted at a market price as upheld by this court. However, this version cannot be accepted because the land was allotted in 1990, at a price prevailing in 1987 to respondent no. 2 - Society. Had it been the case that the respondent no. 2 - Society was allotted the land and allotted to its members, the question would have been different. In the instant case, after the land was allotted to respondent no. 2 and possession was taken by this very deponent which is clear from the record, and subsequently the new Society i.e. respondent no. 4 Society has taken the possession. He was common Secretary of respondent nos. 2 and 4 - Societies. AUDA has filed affidavit and has pointed out that AUDA has given the land to the Society which made an application for allotment of land. Thus, it is very clear that the plots were allotted to respondent no. 2 - Society and say of Shri Jagadeesan cannot be accepted.

###. In his further affidavit at page 260, Shri Jagadeesan has come out with a version that the use of the plot is specifically permitted and it does not cause public inconvenience or public nuisance in any manner. He has stated that no complaint has been filed about any nuisance or inconvenience in the neighbourhood. It is stated that encroachers are encroaching even on the footpaths and the citizens are compelled to walk on the road which causes not only inconvenience but is always dangerous and yet, there is inaction on the part of the government. To talk about nuisance or public nuisance or inconvenience, one must know that this deponent opted for plot for residential purpose only though he was allotted

plot at Gandhinagar and he ought to have seen the definition of residence enacted in the Act itself. When the purpose was clear i.e. for residence, he cannot embark upon other inquiries. He should have confined himself and should have seen whether the plot is being used for residence or not and the plot having been used for other purposes, it is not open for him to say that there is no inconvenience or nuisance to others. AUDA entrusted the property with the sole object of construction of residential houses only. Keeping in mind this aspect, even the State Government bringing the Ordinance to regularise the construction has kept these properties out of the purview of the provisions of the Act and that itself indicates that the property must be used for the purpose of residence only. It is contended by him that he should not be treated in isolation considering the use of the land and should be given same treatment with similarly situated persons. One fails to understand that how other citizens are similarly situated. Is it his case that other citizens are given plots in AUDA area in which he got? At the cost of repetition, it is required to be stated that these officers have misused their position and power. Other officers who were allotted plots at Gandhinagar did not pursue further. It is not proper to say that same treatment is not given to him. If by the said permission, he got the plot, he did not come out with a case that others should be given plot in the similar manner. Whenever such permission is required, he has got permission. He has repeatedly used the zone table which zone table cannot be used strictly because the land was allotted for the purpose of residence only, was not free hold land and not for the use permissible other than residential use in residence zone. This distinction must be borne in mind. Use of plot for the purpose other than the residence is contrary to affidavit filed and provisions/byelaws under the Cooperative Societies Act.

###. Respondent No. 9 Shri M. Sahu has filed affidavit and the contentions raised by him in his affidavit are required to be rejected on the aforesaid ground. Shri M. Sahu, as pointed out by the Resident Deputy Collector in his affidavit at page 626 onwards, was allotted plot admeasuring 250 sq. mts. bearing plot no. 543/1 in Sector no. 8. Shri Jagadeesan was also allotted plot admeasuring 250 sq. mts. bearing plot no. 543/2 in Sector no. 8. Thus, at the initial stage also, they were given plots. It may be noted that Shri S. Jagadeesan was given plot at some other place but on 16.7.90, location was changed and he took plot in Sector no. 8 bearing plot no. 543/2. Thus, plots were

allotted on 15.3.90 and knowing full well that they were already allotted plots for residence at Gandhinagar at concessional rate, they took plots in this Society for residence. It appears that the members of the respondent no. 2 Society may not have shown any interest as plots were already allotted at Gandhinagar, but some members of that Society continued and despite the fact that they were allotted plots, they took the plots by forming respondent no. 4 Society and the persons being common and name being common, the AUDA may not have inquired at all. At the most, it may be the case of omission or negligence etc. on the part of the AUDA. However, subsequently, when the documents were executed, the AUDA has not taken any care because the registration numbers of the Societies are different and AUDA could have known easily that the members of the Society who are asking for document are not the members of respondent no. 2 Society. AUDA has failed to explain this aspect.

###. Respondent No. 4 Society has not come with clean hands. No affidavit is filed giving the names of the members who contributed for more than one crore paid to AUDA on 30.5.90. One has to remember that all members have not filed their affidavits to support that they all contributed on a particular date toward the cost of land. It is clear from some of the affidavits that they became members subsequently and paid subsequently. If all the members did not contribute the amount who was the angel providing finance for one time payment. Again almost all are stating that they have taken loan from the same bank when they became members. It is not explained as to who paid the amount. In absence of names of the members and other details it is clear that some others have paid. Had it been that these officers paid, respondent no. 4 would have said so on oath. Initially, there were 10 members only. Some joined in October and some even thereafter. It is not the case that these 10 members paid the amount. Others could not have paid in view of the fact that they became members subsequently and have clearly stated so in their affidavits.

###. On behalf of AUDA, it is suggested that they must be asked to pay market price prevailing in 1990. We cannot accept this suggestion because it would amount to permitting illegalities. Knowing full well that they were allotted plots in the twin city of Ahmedabad-Gandhinagar, the other members of respondent no. 2 - Society who were happy with the land allotted to them at Gandhinagar did not pursue the matter further but these officers pursued the demand. Instead of 200 sq. mts. of plot, permissible in view of the policy of the

government under the Urban Land (Ceiling & Regulation) Act overlooking the same they took plots of larger areas and illegalities at several stages have been committed.

###. At the cost of repetition, we may simply state that the Resident Deputy Collector, Gandhinagar has filed affidavit and has placed on record the details of Sumangalam Society wherein demand for 100 plots of 200 sq. mts. each was made and list of 16 members is placed on record. This application was forwarded with 11 affidavits which is clear from the endorsement of receipt made below the application. We have discussed about this in detail in earlier part of the judgment and therefore, we do not discuss the same, but suffice it to say that at pages 634 to 639, names of members of respondent no. 4 - Society are given, which includes name of member who took plot from AUDA. There are zerox copies of other letters along with the affidavits giving details about the demand, name of the person who was allotted the land along with the affidavit etc. At page 662, there is summary indicating the Sector Number, Plot Number and whether the person is occupying or has given on rent or has disposed of or the building is vacant or not. These documents and these details were never placed before the Court earlier as all these aspects were suppressed. Mr. Sahu has also stated what Mr. Jagadeesan has stated and therefore the same is required to be rejected.

###. L. Mansinh (P. 200) has filed an affidavit. He has stated in his affidavit that he was on deputation with the Government of India from 1.5.87 to 31.4.92. He has stated he was approached by a colleague namely I.P. Gautam, IAS, Managing Director of Gujarat Industrial Investment Corporation, proposing him to become member of the Society for IAS and IPS officers of Gujarat cadre. He has stated that he belongs to Orissa and he had no accommodation of his own either at Ahmedabad or at Gandhinagar. He showed interest and sometime in February, 1991, a form was forwarded to him for membership which was returned duly filled. He was allotted plot no. 14 in the said Society admeasuring 290.25 sq. mts. He has not given the date on which he made payment and when he took possession of the plot. However, he has stated in para 3 that Mamlatdar (Land Allotment), Gandhinagar City, vide his letter dated 22.5.92 allotted plot no. 135 in Sector 8-C in Gandhinagar admeasuring 330 sq. mts. in response to his application since he wanted residential accommodation at Gandhinagar. He has produced copy of the letter at Annexure : I, along with the affidavit. He was required to construct within two years. He paid Rs. 79,000/= to

the Government of Gujarat for the allotment of the plot at a concessional rate to him. He commenced the construction within stipulated time. He has stated that it was financially difficult to service his debt and therefore, he decided to dispose of the right, title and interest in the plot no. 14 of the Society. He has stated that he received certain amount as he had undertaken some consultancy work in United Nations Organization (UNO). He made inquiries from other colleagues and in view of the opinion, plot was transferred and he entered into an agreement with one Kalaratna Housing Society Pvt. essentially engaged in housing accommodation. It is interesting to note that he has not given the date of this transaction. He has not given details in this behalf at all. He addressed a letter to the Chairman of the Society asking for permission to transfer the plot. However, Mr. Kavina, learned advocate, has stated that the Society did not grant him permission nor even refused permission and ultimately he executed the sale deed on 28th June, 1996. He has produced on record the copy of sale deed. He has come out with the version that the land was transferred for total consideration of Rs. 5,80,500/=. He has stated that in the meantime, he completed the construction at Gandhinagar. He has stated that in response to the government queries, he replied to the same on 26.6.96. With regard to his claim for construction of residential house at Gandhinagar, it would be interesting to refer to affidavit of Residential Deputy Collector, Gandhinagar at page 626 onwards. At page 662, he has pointed out that L.Mansinh was allotted plot no. 135 in Sector 8 and he has given the property on rent to someone else. With regard to his say that he was allotted plot at Gandhinagar in 1992, as referred in para 3, one will have to refer to affidavit filed by Resident Deputy Collector, wherein at page 668, he has pointed out that L. Mansinh was allotted plot no. 135 admeasuring 330.00 sq. mts. in Sector 8 vide order dated 20th February, 1990 and Sanad was issued on 22.4.92. Thus, as claimed, that he was allotted plot at Gandhinagar subsequently does not find favour with the record and at Gandhinagar also he has not erected house for the purpose of his residence. On behalf of the Cooperative Societies, affidavits and relevant documents for forming of respondent no. 4 Cooperative Societies are produced on record. Thus, when the plot was allotted in the year 1990, yet this deponent has come out with the version that he was allotted plot in 1992. What is required to be stated is that in the year 1992, Sanad was issued and the letter which he has referred clearly indicates that possession of the plot has already been

handed over to him i.e. to Shri L. Mansinh and it was for him to provide fencing, plate indicating name and plot number for the purpose of identification. It is not a letter of allotment as stated by him. At page 213, there is reference to the fact that the plot was allotted to him vide order dated 20th February, 1990 which the Resident Deputy Collector, Gandhinagar has referred to at page 658. It is interesting to note the conditions with which the plot was given. Condition no. 2 not only indicates that the construction shall be commenced within two years but he has to reside compulsorily in the house. It seems that the government gave plot with an intention to provide residential accommodation for the members of the Society namely IAS and IPS officers and not for the purpose of earning rent otherwise condition no. 2 would not have been imposed. The conditions specifically state that if the person is not residing, then he has to return the govt. quarter. Interestingly, the officers were not serving at the same place and were serving in various districts or at other places and therefore, they were not disturbed with this condition. The conditions further prescribe at page 217 that the house which may be constructed shall be occupied by the occupier for his residential purpose only and the said property would not be used for any purpose except for residence. Condition no. 6 at page 217 clearly mandates that even after the construction without prior permission of the State Government, the property shall not be transferred in any manner. Thus, the intention of the government in allotting the plot was that the officers may be provided the plot for the purpose of constructing residential house for their purpose only and not for the purpose of earning any income. Time bound programme was given for construction failing which the plot was required to be surrendered and transfer was strictly prohibited. Thus, as indicated by the Resident Deputy Collector, Gandhinagar that even L. Mansinh has rented the property at Gandhinagar and is not occupying it for residence and at Ahmedabad he was allotted a plot which he disposed of. These aspects reveal misuse of the faith reposed on the government officer.

###. Shri O. Ravi(P.234) has filed an affidavit stating that he was never office bearer of either New Sumangalam Housing Society Ltd. or Sumangalam Housing Society Pvt. Ltd. Likewise L. Mansinh, he has also come out with a version that he was approached by his colleague in February, 1993. He has stated that he is from Karnataka and was interested in becoming member with a view to acquire a plot for residential accommodation of his own in the State of Gujarat. He has stated that the plot

admeasuring 290.25 sq. mts. being sub plot no. 15 in Final Plot No. 695 was allotted by the Society. He took a loan from the State Bank of India to the tune of Rs. 1,90,000/= and took interest free loan from two individuals namely Shri Mukul Dev and Shri B.V. Char and paid the amount of consideration of Rs. 3,82,000/=. He has stated that he informed the Government of Gujarat in this regard. He has come out with a version that in 1994, there was a proposal for sending him on deputation to the Government of India and therefore, he came to the conclusion that investment in the plot would not yield fruits inasmuch as he would not be able to enjoy the land nor construct thereupon and relying upon the judgment of the Division Bench of this Court, decided to sell the plot in question. He has referred this aspect in para 3 at page 237. He has stated that on 26th June, 1995, he took charge as Private Secretary to the Hon'ble Minister of Railways at New Delhi and on completion of 5 years at New Delhi, he came back to Gujarat in June, 2000 and again he was posted at New Delhi with effect from 5.10.2000 as Private Secretary to the Hon'ble Minister for Heavy Industries. He has stated that he entered into a registered sale deed on 10.3.97 with one Kalaratna Housing Private Limited (with which L. Mansinh had entered into an agreement). He has stated that he received total consideration of Rs. 6,09,525/= on 10.3.97. He has stated that he has informed the government about the sale of plot in question. He has stated that he has decided to settle in New Delhi. He used the sale proceeds for acquisition of other immovable property at New Delhi.

###. In para 9, he has stated that the transaction was in the year 1997 and the Court could not inquire in the matter which is of more than 5 years vintage. He has come out with a version that the Society by its mute consent permitted the transfer of plot in question. He has stated that the necessity to honour his commitments to his friends who had advanced him interest free loans, compelled him to act as he did. Let us see the affidavit of Resident Deputy Collector, Gandhinagar at page 626. As per the letter of Sumangalam Housing Society at page 630, which we have referred earlier wherein demand was made for 100 plots each of 200 sq. mts. vide letter dated 5th July, 1988. It is also interesting to note that Resident Deputy Collector has pointed out in his affidavit at Annexure : H that Shri O. Ravi was allotted plot no. 462/2 admeasuring 250 sq. mts. in Sector 1 at Gandhinagar vide order dated 29.5.95. Not only that but on 21.1.2000, he disposed of this plot in favour of one Bhikhaji Ratanji Munsi which is noted in

Annexure : H at page 658. Policy was declared in 1990 to allot plots to officers at Gandhinagar. Therefore, this officer was aware that the plots for the purpose of residence were made available at Gandhinagar then, what was the necessity for him to become a member of this Society and if he obtained plot in Society for the purpose of residence in the year 1993, what compelled him to get plot at Gandhinagar. Consequence is that he got the plot at throw away price from AUDA. He disposed of the said plot as he found that he was permanently residing out of Ahmedabad, there was no use to get the plot and he disposed of the plot on 10.3.97 and thus, for pretty long period, there was no construction. When he was not intending to return what was the purpose in taking the plot at Gandhinagar also. This indicates nothing but to get membership, take plot and to dispose of the plot. The State Government is not relying on the value indicated in the document but is relying on `Jantris' for the purpose of stamp duty and to arrive at market value. In view of what is stated hereinabove, version of this officer cannot be accepted.

###. Shri H.M. Shah, respondent No.15 (P. 728) has filed an affidavit on 4th January, 2001 with documents in favour of Kalaratna Housing Pvt. Ltd. He has stated in his affidavit that sometime in the year 1990, he became member of the Society. However, he has not clearly stated the date on which he was allotted plot in the Society admeasuring 282.19 sq. mts. on total consideration of Rs. 3,20,000/=. He has also stated that he was allotted plot no. 160 admeasuring 330 sq. mts. in Sector 8 at Gandhinagar vide Sanad dated 18.3.92. He has stated that he disposed of the property in sub plot allotted to him on lease in favour of Kalaratna Housing Pvt. Ltd. by a registered sale deed on 9.7.96 for a total sale consideration of Rs. 6.00 lacs. It appears that out of the said amount, he repaid the loan. He has come out with the version that considering the amount repaid by him, he has not earned anything out of this transaction. Resident Deputy Collector has filed an affidavit along with the annexures. From the annexures placed on the record along with the said affidavit, it is very clear that Shri H.M. Shah was member of the respondent no. 2 Society. We have referred these documents earlier and therefore, except pointing out that his name is appearing in the list of members of the Society Resp. No.2 on 18.10.88, we do not discuss further. Resident Deputy Collector has also pointed out that Shri H.M.Shah was allotted plot no. 160 admeasuring 330 sq. mts. in Sector 8 at Gandhinagar vide order dated 20th February, 1990 (Vide Annexure :

H). He has stated in his affidavit that construction of residence is in progress at Gandhinagar and thus, it is very clear that within the period of two years, he has not carried out the construction as per the conditions and the government has not taken any action against this officer though he did not carry out construction and did not start residing in the plot allotted to him at Gandhinagar. What this indicates?

###. Shri R.D. Tamhane, respondent No. 17 (P. 743) has filed an affidavit stating that he was member of the Society since its inception in the year 1990. He was allotted plot no. 21 admeasuring 280.86 sq. mts. in Final Plot No. 695 for consideration of Rs. 3,20,000/= which amount he obtained by way of loan from the State Bank of Saurashtra which he paid in two installments. He has stated that he was allotted plot no. 158 admeasuring 330 sq. mts. in Sector 8 by Sanad dated 11.9.90 at concessional rate for consideration of Rs. 80,000/=. He has stated that there was a condition to commence the construction and to complete the same within two years and accordingly, he erected the residential building and is occupying the same since 1994. He has stated that he was finding it difficult to repay the loan and he came to a conclusion that it would be impossible for him to retain the plot at Ahmedabad. He has further stated that he repaid the loan with interest like others. He has come out with a version that relying on an opinion, he disposed of the plot. He entered into an agreement on 24.4.95 with one Jayvirsinh K. Zala of 10, Manekbag Colony, Naranpura, Ahmedabad for a total consideration of Rs. 7.00 lacs. There is no sale deed produced on record, but he has produced on record the agreement to sell at page 729. Towards consideration, he took Rs. 5,20,000/= on 24.4.95. Thereafter, supplementary agreement was executed which is at page 757 on the same day. But till date, there is no sale deed produced on record. The property rights cannot be transferred without the sale deed in accordance with law. The Society has not granted any permission to transfer the property in question and the State is deprived of the stamp duty. Without the sale deed being executed, possession is handed over. Is it with a view to avoid the stamp duty this procedure is followed? The Society has rightly not granted permission as the plot was given to the member for the purpose of residential use only and not for profiteering or earning income.

###. Shri P.K. Taneja, respondent no. 22 (P.764) has filed an affidavit on 30th December, 2000 stating therein that he was allotted plot no. 12 admeasuring 254.37 sq.

mts. of Final Plot No. 695. He has stated that he was approached in the year 1992 by certain colleagues with a view to persuade him to become a member of the Society at Bodakdev. He was given to understand that certain plots were to be allotted to the employees of the State Government. Towards this, he was made to understand that loan from the State Bank of Saurashtra would be available and necessary formalities will be completed with ease. He paid the sum of Rs. 3,71,380/= to the Society as consideration. Receipt thereof is produced on record at page 771 which is undated and is issued by S. Jagadeesan, Honorary Secretary.

###. He has stated that he was on deputation at New Delhi and assumed charge on 8.9.94. Thereafter, he faced some personal problems. On account of disputes between the husband and wife, proceedings were initiated in the court of law and in view of this mental agony, he decided to dispose of the plot allotted to him to one Babubhai V. Barot for a total consideration of Rs. 6,08,460/=. Agreement to sell was executed on 4.5.95. He has stated that he executed irrevocable power of attorney in favour of purchaser and also handed over possession of the plot to the said purchaser. He has stated that in all, he received Rs. 4,69,749/=. In para 5, he has highlighted that he was in need of money for seeking legal advice. He therefore transferred the said plot under agreement to sell. In para 7 of his affidavit, he has admitted that he was allotted plot admeasuring 250 sq. mts. at Gandhinagar at concessional rate for which he paid the sum of Rs. 55,000/= to the State Government in 1991. He was required to complete the construction within two years. He was not able to commence the construction and therefore, the Collector, Gandhinagar has granted him extension upto 6.10.2002. He has stated that he returned to New Delhi on deputation for 5 years on 1.11.99. When he was already allotted plot in the year 1991 for the purpose of residence, it is difficult to understand that others would persuade him to get plot in Ahmedabad and would agree to make payment on taking loan from the Bank. Proceedings are initiated subsequently in the court of law between the husband and wife in the year 1997 and therefore, it is not correct to say that in the year 1995 in view of these difficulties, he was required to transfer the plot.

###. Resident Deputy Collector, Gandhinagar, vide Annexure : H (relevant page 660) has pointed out that Shri P.K. Taneja was allotted plot no. 541/1 admeasuring 260 sq. mts. in Sector no. 8 vide order dated 26.9.90. Since Shri P.K. Taneja was having plot

at Gandhinagar, he was not able to carry out construction. It is difficult to believe that he would invest money in a Society at other place and that too by taking a loan from the Bank.

###. Shri K.C. Mahapatra (P. 783) has filed an affidavit. He has stated that in pursuance of an application he was enrolled as member of the Society in the year 1993. There were number of plots remaining vacant after allotment to their members. He was allotted plot no. 31 admeasuring 264 sq. mts. and was asked to pay Rs. 3,85,440/- in January 1993. He has stated that he had no knowledge about the irregularity. However, in the allotment of the land to the Society he was not a party to any act of deceit or fraud. He has stated that he was a bonafide purchaser without any notice of any defect in the title of the Society over the land. He has stated that he had applied for undertaking construction of a residential house and has stated that he would like to construct the residential house on the plot allotted to him. He never thought of transferring the plot and the plot is under his occupation.

###. Resident Deputy Collector, Gandhinagar has placed material on record. As indicated in Annexure: H to the affidavit of Resident Deputy Collector (relevant page 664) Shri K.C. Mahapatra was allotted plot no. 166 admeasuring 330 sq. mts. in Sector - 8 at Gandhinagar vide order dated 20th February, 1990. At annexure: I, at Page 662, the Resident Deputy Collector has pointed out that Shri K. C. Mahapatra is residing himself in plot no. 166, and that he has rented out the first floor of the building. This aspect has not been denied. About the allotment of the plot, he has produced on record allotment letter at page 787. The said letter is signed by Shri S. Jagadeesan as Hon. Secretary. From the record at page 788, it is clear that he addressed a letter to Shri S. Jagadeesan and informed that as per the telephonic discussion in his favour, possession has been handed over to him and requested him to forward the receipts for the two cheques sent to the Society. He has also placed on record at page 789 a letter issued by Shri K.V. Bhanujan, Chairman of the Society informing him that the Registrar of Stamps has issued notice to get the documents of land registered with adequate stamp duty. The total amount of the stamp duty to be paid without penalty comes to around Rs. 15.00 lacs. After discussion of the matter and legal advice, it was decided that the amount should be collected from the members of the Society as the Society had no sufficient funds and he

was requested to make the payment of Rs. 30,000/-. He has placed on record the letter for the same and reminder for payment of Rs. 30,000/-. He has produced on record at page 793 a letter dated 24th January 1995 indicating that he has made payment by demand draft. He has also produced on record zerox copy of the demand draft. On 6.3.99, the Society addressed a letter to the Assistant Town Planning Officer signed by Shri Varesh Sinha indicating that Shri K.C. Mahapatra is member of the Society and has been allotted a plot. Application refusing development permission is at page 803 whereby Shri K.C. Mahapatra was called upon to produce resolution of the Society whereby he was enrolled as member because at the initial stage when the list was forwarded, his name was not appearing in the list.

###. It appears that he became member subsequently for which no resolution is passed by the society and he was allotted plot and he has raised no construction. At the same time, it is clear that he was allotted plot at Gandhinagar at concessional rate by the State Government (P. 659) for erection of a building for the purpose of residence and he has constructed the building there and is residing there. However, he has given the first floor of the building on rent as per the affidavit of the Resident Deputy Collector, Gandhinagar at page 662.

###. Shri S. K.Mohapatra, (P. 807) has filed an affidavit on 7.1.2001, inter alia stating that he was on deputation to the Government of India in the year 1991 and on return he was looking for a plot for construction of a house. He has stated that he came to know about the Sumangalam Cooperative Housing Society Ltd., a Society of the Government officers and that it was allotted the land by AUDA for allotment to its members and that some plots were still available. Under the circumstances, he submitted an application and vide letter dated 4th October 1991, he was informed that he can be taken as member and on payment of Rs. 3.8 lakhs for a plot and accordingly on payment he was allotted plot no. 2 of TPF plot no. 696 admeasuring 295.65 sq.mts. He has stated that he ascertained the fact that the plot was allotted in accordance with law. He has stated that he approached the banker for a loan of Rs. 3.00 lakhs for making payment. He found it difficult to make arrangement for finance for constructing a residential house and to repay his debt of loan amount. He also realized that without arranging for a fresh loan for the construction, it was going to be difficult for him to put up the construction. He was allotted plot at Gandhinagar in the year 1993 at a fairly concessional price. He therefore decided to erect

building for his residential purpose at Gandhinagar and to get rid of the plot at Ahmedabad. Ultimately, he entered into an agreement to sell in February 1994 and the registered sale deed was executed on 28th October 1997. Thus, he got Rs. 5.90 lakhs for the plot. With regard to the allotment of plot at Gandhinagar, the Resident Deputy Collector, Gandhinagar has filed an affidavit. Shri S. K. Mohapatra has filed affidavit for getting plot at Gandhinagar and he was allotted the plot at Gandhinagar admeasuring 250 sq.mts. bearing plot no. 582/A2. Zerox copy of the affidavit is at page 366. Decision of the government to allot plots was taken much earlier and all the officers were allotted plots at Gandhinagar or were entitled to get the plot at Gandhinagar and therefore, there was no earthly reason for him to apply for a plot at Ahmedabad and if he got the plot at Ahmedabad, there was no reason for him to get another plot at Gandhinagar. He has not stated that when letter of allotment was issued in his favour for allotment of plot by the Society at Ahmedabad. He has not indicated the date on which he made payment to the Society at Ahmedabad. For the reasons best known to him, he has not disclosed these material facts.

###. Shri R.K. Tripathy, (P. 811) has filed an affidavit stating that on becoming a member of the Society, he was allotted Sub Plot No. 3 of Final Plot No. 698 admeasuring 325.60 sq. mts. for which he took loan of Rs. 2,76,000/= from the State Bank of Saurashtra for making payment of the plot. He has not stated the date on which he became member or the date on which he made the payment. As others took decision, he also took a decision to transfer the plot without taking permission of AUDA or the Society. He has stated that it was difficult for him to raise the construction. If that was so, there was no earthly reason for him to get the plot. He has stated that he entered into an agreement in respect of the plot with Divya Members Association, a registered NTC under the Non-Trading Corporations Act, 1959 for consideration of Rs. 6,51,340/- and parted with the plot in favour of the said association. No document of transfer of property is produced on record. No permission of the Society was obtained. When the plot was given for the purpose of erecting the building for residential use for the member himself, this person has not used for that purpose and has not acted in accordance with law. He has not given details of the Association, whether it was formed by him or not is difficult to say. But it is certain that 9 residential units were constructed and one unit has been taken by him which is being used by him for his residential purpose. It was

never intended for sale/transfer of the property in any manner which was given for residential purpose only by the member only and in clear violation, the property has been transferred by this respondent.

###. Shri C.I.Joy, (P. 845) has filed an affidavit and has placed on record that he has been allotted Sub Plot No. 5 of Final Plot No. 694 admeasuring 312.63 sq.mts. and that he has been allotted 5 shares. He has stated that he has not made any construction whatsoever or has not alienated his right, share or interest in the plot. Shri C.I.Joy was the member of the Society registered at Gandhinagar and his name appears in the list submitted to the Collector which is at page 634.

###. Shri Vijay Ranchan, (P. 847) has filed an affidavit on 23rd January, 2001 stating that he was allotted sub plot no. 4 of Final Plot No. 695 admeasuring 271.50 sq. mts. and was allotted 5 shares on 1.10.90. He has not made any construction on the aforesaid plot or has not alienated his rights, shares or interest in the aforesaid property. From the affidavit filed by the Resident Deputy Collector and Annexure: I signed by the Mamlatdar (Land Allotment), it is clear that Shri Vijay Ranchan was allotted plot no. 131 admeasuring 330 sq.mts. in Sector 8 at Gandhinagar and that he has rented the premises erected for his residence. Thus, he is earning financial benefits by way of rent. He was allotted the said plot admeasuring 330 sq.mts. vide order dated 20th February, 1990 which is clear from the affidavit of the Resident Deputy Collector, Gandhinagar and Annexure: H at page 60. If in 1990, plot was allotted in Gandhinagar at a throw away price for residential purpose, can it be said that at Ahmedabad also, he took plot for residential purpose. However, he has not disclosed the fact that the plot was allotted at Gandhinagar to him at throw away price.

###. Shri R. C. Mehta, (P. 849) has filed affidavit and has stated that he was allotted Sub Plot no. 23 of Final Plot no. 695 admeasuring 280.86 sq. mts. and was allotted 5 shares on 13.9.90. He has further stated that he has not alienated the property in any manner whatsoever. However, he has not disclosed the fact that plot was allotted at Gandhinagar to him at throw away price.

###. Resident Deputy Collector, Gandhinagar has filed an affidavit from which it is clear that Shri R.C. Mehta has erected building at Gandhinagar in plot no. 172 in Sector 8 and that he is occupying the said building. At

page 660, the Resident Deputy Collector has pointed out in Annexure: H at sr. no. 29 that he was allotted plot no. 172 admeasuring 330 sq. mts. in Sector 8 at Gandhinagar vide order dated 20th February, 1990 and Sanad was issued on 1.9.90. However, this respondent has not disclosed that he was member of the Society at Gandhinagar namely respondent no. 2 Society. His name appears at sr. no. 77 of the list as on 12.12.88 of the Society which is produced on record by Resident Deputy Collector.

###. Shri B.S. Nirula, (P. 851) has filed an affidavit and has stated he was allotted sub plot no. 16 of Final Plot No. 695 admeasuring 293.50 sq.mts. and was allotted 5 shares on 1.10.90. He has stated that he has not alienated right, share or interest in the aforesaid plot to any person. He has not disclosed the fact that the State Government has allotted plot at Gandhinagar admeasuring 330 sq.mts. being plot no. 175 in Sector 8 vide order dated 20th February, 1990 and Sanad was issued on 6.10.90. He has erected a building and is residing in the said building which is clear from Annexure: I at page 662, the statement signed by officers of the government. These documents are placed on affidavit by the Resident Deputy Collector. If he was allotted in February, 1990, what was the purpose in getting the plot at Ahmedabad has not been explained at all. These officers were given plot for the purpose of erecting the building within stipulated period and despite having not done so, AUDA has not taken any action.

###. Shri P. Paneervel, (P.853) has filed an affidavit and has stated that he was allotted Sub Plot no. 11 of Final Plot No. 696 admeasuring 300.6 sq.mts. and was allotted 5 shares on 9.4.92. He has stated that he has not alienated his right, share or interest to any person. He has not disclosed before the Court that he was given plot at Gandhinagar and is earning rental income. Resident Deputy Collector in his affidavit at page 658 has pointed out that Shri Paneervel was allotted plot no. 545/1 admeasuring 250 sq.mts. in Sector 8 at Gandhinagar vide order dated 17.3.90 for which Sanad was issued on 2.3.93. At Annexure: I at page 662, the government officers have pointed out that Shri Paneervel has erected building and has given the same on rent and thus, he is earning rental income. Why these facts have not been disclosed is not difficult to understand.

###. Shri N.L.Kalma, (P.855) has filed an affidavit and has stated that he was allotted Sub Plot No. 20 of Final Plot No. 695 admeasuring 280.86 sq.mts. and was

allotted 5 shares on 13.9.90. He has stated that he has not alienated his right, share or interest in the aforesaid plot. He has not disclosed the fact that he was allotted plot no. 179 in Sector 8 admeasuring 326.22 sq.mts. He has erected building and as per Annexure: I, the building is closed since long. Thus, a plot allotted to him at Gandhinagar and yet, he obtained a plot at Ahmedabad for the reasons best known to him. Thus, at both the places, he has obtained the plots.

###. Shri V.B. Patel, (P. 857) has filed an affidavit on 20th January, 2001. He has stated that he has been allotted Sub Plot no. 8 in Final Plot no. 695 admeasuring 410.41 sq.mts. and was allotted 1 share on 1.1.95. He has not carried out any construction and he has not alienated his right, share or interest in the aforesaid plot in any manner. He was member of the respondent no. 2 Society which is clear from the list of members of respondent no. 2 Society at page 638 annexed by the Resident Deputy Collector, Gandhinagar in his affidavit at page 626.

###. Shri V. P. Kamdar, (P. 859) has filed affidavit on 20th January, 2001, stating therein that he was allotted Sub Plot no. 7 of Final Plot No. 695 admeasuring 257.04 sq. mts. and was allotted 5 shares. So far as allotment of shares is concerned, papers are not produced and blanks are kept as it is. He has stated that he has not made any construction whatsoever. He has stated that he has not alienated his right, share or interest in the aforesaid plot to any person.

###. Shri M.Sibbal, (P. 860) has filed affidavit on 19th January, 2001. He has stated that he was allotted sub plot no. 4 of Final Plot No. 696 in the Sumangalam Cooperative Housing Society Ltd., Bodakdev admeasuring 285.18 sq. mts. and was allotted 5 shares on 11.11.93. He has not raised any construction on the plot and has not transferred or alienated any right whatsoever in the property or share etc.

###. Shri P.K. Valera, (P. 862) has sworn an affidavit and has stated that he was allotted sub plot no. 6 of Final Plot No. 695 in the Society admeasuring 261.89 sq.mts. and was allotted 5 shares on 1.2.93. He has not raised any construction on the property and that he has not transferred any right or interest in the property in favour of anyone. The affidavit is sworn on 9th January, 2001. He has not disclosed before the Court that on 21.4.90, he was allotted plot no. 264/2 admeasuring 245.50 sq.mts. in Sector 7 for which Sanad was issued on

22.8.90. It is so stated in the Annexure: H to the affidavit of Resident Deputy Collector, Gandhinagar at page 864. He has not stated as to how the plot is used by him.

###. Shri S.S. Khandwawala, (P. 864) has filed an affidavit on 22nd January, 2001 stating therein that he was allotted sub plot no. 10 of Final Plot no. 695 admeasuring 273. 95 sq.mts. He has stated that no construction has been made over the plot allotted to him. He has further stated that he has not transferred rights in the property. However, he has not disclosed in his affidavit that he got the plot at Gandhinagar at concessional rate allotted by the State Government.

###. Resident Deputy Collector, Gandhinagar in his affidavit has pointed out that Shri Sibbal was allotted plot no. 165 admeasuring 326.22 sq.mts. in Sector 8 vide order dated 8.5.90 and Sanad was issued on 1.11.90. The Resident Deputy Annexure:I has also pointed out that Shri Khandwawala, after erecting a building on the plot has given it on rent and is earning rental income. If in 1990, plot was allotted for the purpose of residence, what was the purpose in acquiring the plot in the year 1993 is not stated by him.

###. Shri Pramodkumar K. Jha, (P. 866) has filed an affidavit and has stated that he was allotted plot no. 32 in Final Plot no. 695 admeasuring 304.00 sq.mts. He was also allotted 5 shares on 13.9.90. He has raised no construction over the said plot and has not transferred any rights or interest in the property.

###. Shri Hiralal, (P. 868) has filed an affidavit and has stated that he was allotted sub plot no. 22 of Final Plot No. 695 admeasuring 280.86 sq. mts. and that he was allotted 5 shares on 13.9.90. He has not raised any construction on the said plot and has not transferred any rights or share in the said property. However, he has not disclosed that he was allotted plot no. 243 admeasuring 330 sq. mts. in Sector 7 at Gandhinagar and that this plot was allotted to him by the State Government at concessional rate as stated by the Resident Deputy Collector, Gandhinagar in his affidavit. This plot was allotted to him vide order dated 22.2.90 and Sanad was issued on 1.10.90. Resident Deputy Collector has also produced on record the status report signed by Mamlatdar (Land Allotment) and Resident Deputy Collector, Gandhinagar vide Annexure: I indicating that Shri Hiralal has rented the property and thus the property is used for earning income and not for residence.

###. Shri K.V. Joseph, (P. 870) has filed an affidavit stating therein that he was allotted sub plot no.24 of Final Plot no. 695 admeasuring 280.86 sq.mts. and that he was allotted 5 shares on 13.9.90. He has stated that he has not raised construction over the plot and that he has not transferred rights in the property in any manner whatsoever. Interestingly, he has not disclosed the fact that he was allotted a plot at concessional rate by the State Government in the year 1990.

###. Resident Deputy Collector, Gandhinagar has filed affidavit and has pointed out that Shri K.V. Joseph was allotted plot no. 185 admeasuring 326.22 sq.mts. in Sector 8 vide order dated 8.3.90 for which Sanad was issued on 20th August, 1990 at page 662, Annexure: I, duly signed by the Mamlatdar (Land Allotment) & RDC. It is pointed out that Shri K.V. Joseph has rented the premises erected on the plot allotted to him by the State Government and thus, he is earning rental income. Thus, the plots either at Gandhinagar or at Ahmedabad are not being used for the purpose for which they were allotted.

###. Shri K.V. Harihardas, (P. 872) has filed an affidavit and has stated that he was allotted sub plot no. 18 of Final Plot No. 695 admeasuring 354.01 sq. mts. and that he was allotted 5 shares on 13.9.90. Unlike others, he has stated that only last year, the construction work has commenced and that it has not been completed and that it has not reached up to the plinth level. He has stated that he has entered into an agreement for sale of plot in question on 25.5.2000, copy of which is annexed as Annexure: I to the affidavit. Thus, by entering into an agreement of sale he has transferred his rights. Though he has stated that he has annexed the copy of the document, the same is not annexed and therefore, it is difficult to state about the document. Why it has not been placed is not stated even at the time of argument.

###. Resident Deputy Collector, Gandhinagar in his affidavit has pointed out at Annexure: H that Shri K. V. Harihardas was allotted plot no. 109 admeasuring 330 sq.mts. in Sector 8 vide order dated 21.2.90 for which Sanad was given on 7.5.1992. Surprisingly, on 30th April, 1998, he has transferred the plot in favour of one Shri Shaileshkumar Natubhai Patel for which the government has granted sanction. The property which is erected is not put to use. Thus, it is clear that though he was aware that he is in possession of plot and in fact it was allotted by order dated 21.2.90, he took plot at

Ahmedabad and disposed of the plot at Gandhinagar and again for this plot at Ahmedabad, he has entered into an agreement for sale. He has not disclosed the amount.

###. Shri P.N. Roy Chowdhury, (P. 874) has filed an affidavit on 20th January, 2001 and has stated that he was allotted sub plot no. 19 of Final Plot no. 695 admeasuring 278.78 sq.mts. and that he was allotted 1 share on 17.04.1996. He has not made any construction whatsoever and has not transferred any rights in any manner whatsoever. Shri Roy Chowdhury was member of respondent no. 2 Society and knowing full well this fact, subsequently he has taken plot in this Society in 1996. He was aware about the Society at Gandhinagar.

###. Resident Deputy Collector, Gandhinagar has filed an affidavit and at Annexure: H he has pointed out that Shri P.N. Roy Chowdhury was allotted plot no. 526/2 admeasuring 250 sq. mts. in Sector 8 vide order dated 4.4.90 for which Sanad was issued on 13.3.92. So far as use of the building at Gandhinagar is concerned, Annexure : I signed by the Govt. Officer at page 662 makes it clear that Shri Chaudhary has rented the property and is not using the same for residential purpose. Thus, the property is used for rental income. So far as the plot at Ahmedabad is concerned, he has not carried out construction over this plot and thus, there is gross violation.

###. Shri Mani Ram, (P. 876) has filed an affidavit on 10th January, 2001 and has stated that he was allotted sub plot no. 5 of Final Plot No. 696 admeasuring 285.18 sq.mts. and that he was allotted 5 shares on 13.9.90. He has stated that he has not transferred rights in the plot in any manner whatsoever. Surprisingly, he has not disclosed the fact that he was allotted plot at Gandhinagar at concessional rate.

###. Resident Deputy Collector, Gandhinagar has filed an affidavit wherein he has pointed out that Shri Mani Ram was allotted plot no. 247 in Sector 7 admeasuring 330 sq.mtrs. vide order dated 22.2.90 and for which sanad was issued on 24.1.91. Annexure : I signed by the govt. officer at page 662 makes it clear that he has erected the building at Gandhinagar and is occupying the same. It is difficult to understand that how a government servant having a plot at Gandhinagar could have applied for a plot at Ahmedabad and that too at concessional rate.

###. Shri K. Kumarswamy, (P.878) has filed an affidavit

and has stated that he was allotted sub plot no. 8 of Final Plot no. 696 admeasuring 297.94 sq.mts. and that he was allotted 5 shares on 13.9.90. He has stated that no construction whatsoever has been raised by him and that he has not transferred any rights in the property in any manner whatsoever. He has not disclosed before the Court that the State Government at concessional rate allotted plot no. 532/2 admeasuring 250 sq.mts. in Sector 8 vide order dated 17.3.90 and that sanad was issued on 31.8.90 which is clear from the Annexure:H at page 659 submitted by the Resident Deputy Collector, Gandhinagar along with his affidavit. Similarly the Resident Deputy Collector vide Annexure : I page 662 which is signed by the officers of the government has pointed out that Shri K. Kumarswamy has erected building but he has rented the property. Thus, the building constructed on the plot allotted to him is being used for earning income. These facts have not been disclosed before the Court.

###. Shri A.K. Pradhan, (P. 880) has filed an affidavit on 18th January, 2002 wherein he has stated that he was allotted sub plot No. 12 of Final Plot No. 696 admeasuring 360 sq.mts. and that he was allotted 5 shares on 1 .4.90. He has stated that he has not raised construction and that he has not transferred rights in the plot in any manner whatsoever. Surprisingly, he has not disclosed that the State Government allotted plot at Gandhinagar at concessional rate.

###. Resident Deputy Collector, Gandhinagar in his affidavit has pointed out that Shri A.K. Pradhan was allotted plot no. 53 admeasuring 330 sq.mts. in Sector 8 vide order dated 23.1.91 and that Sanad was issued on 2.2.91. Vide Annexure:I the government officers through the Resident Deputy Collector have pointed out that Shri A.K. Pradhan erected building and that he is earning rental income and is not occupying the same for the purpose of residence. When in the month of February, 1990 he was allotted a plot at Gandhinagar, it is not difficult to understand as to why the plot was taken at Ahmedabad and this makes it clear that the purpose for which the plot was allotted has not been achieved.

###. Mr. Amit Panchal, appearing for respondents No. 9 and 25 made submissions before the Court. He submitted that the construction has been carried out by the respondent No.9 and 25 and was for the purpose of residence as mentioned in the GDCR. We are not concerned with the purpose indicated in the GDCR because the Development Act itself provides for definition of the

word 'residence'. One need to go to other Act for definition of a word when the said word is not defined in the Act under consideration. Even before the Division Bench in the earlier proceedings, it was submitted that land is required for housing accommodation by members themselves and the Court held that the land is going to be used only for residential purposes. Therefore, shelter cannot be taken under the GDCR.

###. Respondent No.9, M. Sahu has filed an affidavit from pages 159 to 199 and further affidavit from pages 270 to 275.

###. We have earlier indicated that S. Jagadeesan addressed letters on behalf of the Resp. No.2 in the capacity of Secretary. He has come out with a case that he was allotted sub plot No.7 of FP No.694. He has not clarified whether he was a member of the Respondent No.2 or not. It was within his knowledge but he has not stated it before the Court. He has referred to the petition filed earlier. However, he has not pointed out that he filed the affidavit on behalf of the Society and what role he has played on behalf of the Society. From the Court records of earlier proceedings, it is very clear that he filed an affidavit in the capacity of Secretary and it is he who kept mum about the existence of the respondent No.4 Society. There is sufficient material before the Court to show that Shri S Jagadeesan was a member of the respondent No.2 and well as the respondent No.4 Societies. The record is produced before us, which we have already considered. At page 154 he has produced before us the development permission and the fees paid by him for the changer of user. At pages 155-156 he has produced a certificate issued by Chartered Accountants. It clearly reveals that he has received rental income of Rs.27,94,096/- after taking into account deductions under the Income Tax Act upto 16th October 2000. The outflows have also been indicated in the accounts. Suffice it to say that this is the state of affairs regarding a plot allotted for construction of residential purposes only.

###. Shri Varesh Sinha, as respondent No.30, has filed his affidavit at page 882. He has stated that he is holder of sub-plot No.15 in Final Plot No.695. He has gone to the extent of saying that he "decided to rent out some portion of the building being fundamental right of a citizen". Having constructed a building consisting of basement, ground floor to third floor and using the same for running a school and office except the third floor for residence, it would have been more appropriate to say

that he is residing in a portion of the building rather than telling that he has decided to rent out some portion of the building. It goes without saying that major portion of the building is used for non-residential use. Since we have already dealt with the other contentions such as permissible use, previous petitions and Legislative Assembly Questions, we do not deal with the same again here, but suffice it to say that these arguments have no force.

###. S.N. Sinha has filed his affidavit at page 886 which is sworn on 23.1.2001. He has admitted that on 11.3.1989 he became a member of the Resp. No.2 Society. He has also admitted that the application by the Chairman of the Resp. No.2 Society was considered by AUDA but later on the allotment was cancelled. It is further stated that some common members then contemplated formation of the respondent No.4 Society and requested to AUDA for revival of the allotment. It may not be out of context to refer here that application was made by the Respondent No.2 Society, and AUDA in its Board Meeting held on 19.1.1990 decided to reallot the land to the Society. However, the fact that most of the members were allotted plots in Gandhinagar during this time was conveniently withheld from the AUDA. An effort is made in this affidavit also to show that the issue of making payment by Resp.No.2 Society and taking possession by Resp. No.4 are all very insignificant. However, we have already dealt with this issue that 'Society' is a legal entity and therefore all these have its own significance and merely because the members of the Resp. No.4 Society think that it is insignificant, it does not become so. This deponent has also come out with a case of res-judicata in view of the decision rendered by this Court in the earlier petition. We have also dealt with that contention earlier, hence we do not repeat it, except to say that his contention requires to be rejected. He has in paragraph 12 of the affidavit stated that a plot was allotted to him in Sector 8-C at Gandhinagar and copy of the allotment order is produced at page 908. Reading that it is very clear that by order dated 20.2.1990, the Collector allotted the plots. He was made aware about the condition that without sanction of the State Government in writing, he shall not part with the possession of the land or interest therein in any manner whatsoever. A contention is also raised to the effect that the plot is given to the said allottee, viz. deponent Mr. Sinha for the purpose of his residence only at concessional rate without any auction and within two years he will have to complete the construction and will have to reside there failing which

he will have to hand over the possession back to the Government. Not only that, there was also a condition that he will have to erect the building as per the regulations. At page 911 there are other conditions. It is also indicated that the premises will be used for the purpose of residence to whom the plot is allotted. A specific condition is also imposed that it shall not be used for any purpose other than residence including business. Without prior permission of the State Government, the plot or the construction erected thereon shall not be disposed of by way of sale, gift or will and such transfer shall be void. Reading the various conditions, it is clear that it was given to the applicant at a concessional rate for the purpose of residence only for which documents are placed on record.

###. As against this, reading the affidavit and the documents produced on record by the resident Deputy Collector at page 626 onwards pointing out that by order dated 20.2.90 plot admeasuring 330 sq. mtr being plot No.122 in sector 8 was allotted to Shri Sinha and the sanad was issued on 7.3.1991. It is also pointed out by the resident Deputy Collector in the statement at Annexure-I that Mr. Sinha is not residing there but someone else is residing in it.

###. So far as the plot allotted to Mr. S.N. Sinha at Ahmedabad is concerned, it is clear from the records that Shaastra Owners Association Non-Trading Corporation has erected a building. The building has four floors and is used for commercial purpose. Statement at Annexure 'D' to the affidavit at page 914. This building is not used for the purpose of residence by the person to whom the plot was given.

###. We have already dealt with the remaining contentions raised in the affidavit in this judgment. Hence we do not repeat the same.

###. Shri Bhanujan who was at the relevant time working as Additional Chief Secretary, Finance, Government of Gujarat has filed an affidavit (page 357). He was the Chairman of the New Sumangal Society -Respondent No.3-. He has stated that all the members have contributed a sum of Rs.225/- while A. Prasad contributed Rs.100/- more as deposit. It is stated that the Society did not obtain any land to fulfill its objectives and was ultimately wound up under the communication of the District Registrar of Co-Operative Societies dated 9.12.1996. It is half hearted statement. All the members were allotted the plots at Gandhinagar or some were entitled but did

not opt to the same. He has stated that prior to the winding up of this Society, the monies received towards share application from each member were returned to the members. This statement is not supported by any member and no documentary evidence is placed in this behalf. He has further stated that the respondent No.3 was not allotted any land either at Ahmedabad or at Gandhinagar. At annexure I page 360 he has given names of 17 persons who were members of the respondent No.3 Society. No register for resolution is maintained by this Society. This Society was formed for the purpose of providing residential facilities to its members. This Society was registered, as stated above, on 22.5.1989. If that be so, when land was available in 1990, why the land was not taken in the name of this Society and why the land was taken in the name of Sumangalam Society? It appears that the name was the hinderance since their intention was to take possession of the land allotted to 'Sumangal' (Resp. No.2) in the name of 'Sumangalam' (Resp.No.4) because at various communications thereafter, these names have been interchangeably used. Otherwise when the Resp. No.3 Society was in existence, there was no reason to bring Resp. No.4 Society in existence.

###. Ms. Gauri Kumar, who was Secretary of the Respondent No.2 Society, has filed affidavit at page 386. She has stated that from 8.8.1988, she was an invitee to the Executive Committee and Joint Secretary of the said Society till she proceeded to New Delhi in October 1989. It is further stated that she was again appointed as the Secretary of the Resp. No.2 Society in August/Sept. 1995 at the stage of its winding up, for completion of audit and accounting requirements at that stage. At Annexure-I page 389, she has produced the list of promoter-members of the Resp. No.2 Society. The Society had 94 members at the stage of winding up (page 390 to 392). She has stated in paragraph 2(ii) of her affidavit that the members have contributed a sum of Rs.250/= towards share subscription, Rs.5/- as admission fees and towards land contribution, totalling to Rs.6,65,000/-. A vague statement is made in the affidavit based on individual eligibility criteria that some members of the society were allotted plots at Gandhinagar, without giving any exact particulars.

###. Mr. Kavina, appearing for Mr. L. Mansing and Mr. O Ravi submitted that letter was written for transfer of plots but the Chairman of the Society did not give any reply. This was for the purpose of transferring the land to Kalaratna Housing Pvt. Ltd. According to him, action is taken in good faith. He has produced on record a copy

of the letter written by Mr. L. Mansing at page 231 which is dated 22.6.1996. It is clear that he was allotted plot at Gandhinagar also, and without the approval of the AUDA or Society to transfer, the transaction in question took place. He could not have handed over the possession of the plot without permission of AUDA or Society to the buyer after taking the advance. It is difficult to understand as to how the buyer could have commenced the construction on the plot without permission. Reading page 232, it is clear that the property was taken for purpose of profiteering. He has stated that without waiting for the clearance of the Society, he entered into transaction. In view of the letter written by him, it is clear that without taking approval of the authority, the property was disposed of in violation of all norms.

###. Mr. K.S. Chaturvedi, respondent No.19, has filed his affidavit at page 920. He has stated that he was allotted sub plot No.10 of Final Plot No.696 for a consideration of Rs.3,20,000/-, which he obtained by loan from State Bank of Saurashtra. He has further stated that he sold the plot to Mr. Sanjaykumar B Shah for a consideration of Rs.5,10,835-75 by a registered sale deed dated 1.7.1995. It is further stated that the buyer had later on built up a residential house as the possession was given to him with slab level construction. He has further stated that he has not been allotted any plot at Gandhinagar or at any other Society. He has further stated that he has no residential accommodation of his own in Gujarat and he is residing in a flat. He has further stated that he has disposed of the aforesaid plot on account of compulsion of exigencies of his personal life. It is very clear that this plot was not taken with the intention of residence and soon after taking possession, he has disposed of the plot, by committing breach of rules, regulations and laws.

###. Shri Shivlal has sworn his affidavit which is at page 933. He has stated that he was allotted sub plot No.9 admeasuring 301 sq.m trs. in Final Plot No.696 for a consideration of Rs.3,21,538-65. He had obtained a loan of Rs.2,71,538-65 from State Bank of Saurashtra. He has further stated that he has disposed of the said plot in favour of Mrs. Bela Sanjaykumar Shah by a registered sale deed on 18.8.1994 for Rs.6,00,000/-. It is further stated that the purchaser had removed the plinth level construction and has used the plot for gardening.

###. He has further stated that he was allotted a plot

at Gandhingar in Sector No.8 but as it was not convenient to him to settle there, he has disposed of the said plot with construction and has deposited the difference amount of market price with the Government. It is not stated at what amount he disposed of the plot at Gandhinagar. He has produced a copy of the permission granted by the State Government on 20.12.1992 for transfer of his plot at Gandhinagar and by taking a meager sum of Rs.2,05,732/-, the Government permitted him to dispose of his Gandhinagar plot.

###. Reading the annexure to the Affidavit filed by the Resident Deputy Collector, it is clear that he was allotted plot at Gandhinagar on 20.12.1990. Thus almost during the same period he was allotted land at Sumangalam Ahmedabad and at Gandhinagar. Without disclosing to the Government that a plot has already been allotted to him by AUDA through the Sumangalam Society, land at Gandhinagar was obtained and both the plots have been disposed of within a short period.

###. Shri Hamid K Khan has filed his affidavit which is at page 949 onwards. He has stated that he was allotted plot No.17 and the amount thereof was paid by raising a loan from State Bank of Saurashtra. In paragraph 6 of the affidavit, he has stated that he has disposed this plot to Swamini Owners Association at Rs.22 lakhs.

###. In paragraph 4, Mr. Khan has stated that he was allotted a plot of land admeasuring 326.22 sq.mtrs at Gandhinagar for Rs.77,866/-. In paragraph 5 it is stated that the building constructed thereon is given on rent to M/s Tudor India Ltd. When the construction of this building was completed and when it was let out to M/s. Tudor India Ltd. has not been conveniently stated. In any event, it is clear that both the plots were not required by him for residential purposes, and yet plots were taken at both the places. Both the properties are used for profiteering and income.

###. Mr. Bijendrakumar Jha has filed an affidavit which is at pages 964 onwards. He has stated in paragraph 2 that he was allotted sub-plot No.1 admeasuring 276.75 sq. mtrs in Final Plot No.695 on 30.10.1991 for a consideration of Rs.3,20,000/-. It is stated by him that he has sold this plot to a Non-Trading Association for Rs.19,00,000/-. In paragraph 4 it is stated that he has purchased an office accommodation in the fourth floor in the said building in plot No. 695 for a consideration of Rs.5,25,000/- and the said premises till 26.1.2001 was let out to M/s Debug Infotech Pvt. Ltd. In paragraph 7

he has stated that he was allotted a plot at Gandhinagar in Sector No. 8 and he has carried out construction in the said plot upto plinth level and he is unable to make further construction in the said plot for want of finance.

###. Resident Deputy Collector has filed affidavit page 626. As per this affidavit vide Annexure 'H', plot admeasuring 330 sq. mtr was allotted to him in Sector 8 on 22.2.1990 and the Sanand was issued on 29.8.1990. Thus, after allotment of plot at Gandhinagar for the purpose of residence, it is difficult to understand as to how an officer would be justified in obtaining another plot from AUDA for the purpose of residence - and then to dispose of it for commercial purposes. At both the places, the lands were allotted to him at concessional rates for the purpose of residence, without informing the later allotter that another plot was already allotted to him for the purpose of residence. The fact that within a short period he has disposed of the property and has not made use of the plot for the purpose of residence makes it very clear that the intention was profiteering.

###. Shri M.M. Srivastava has filed affidavit at page 969. He was allotted a plot at Sumangalam Society being sub plot No.30 which he has sold of at more than Rs.10,00,000/-.

###. In this case at page 1011, the Society has given a 'No Objection Certificate' dated 4.8.1998. How could the Society have issued such a Certificate is not at all explained by the Society.

###. In paragraph 5, he has stated that he was allotted a plot at Gandhinagar by the State Government and on the said plot he has constructed a residential house which is lying vacant. This clearly indicates that he did not require even the plot at Gandhinagar and Ahmedabad for residential purposes.

###. Shri I.P. Gautam has filed an affidavit at page 1013 and he has made clear that he was not allotted any plot at Gandhinagar. We have already dealt with hereinabove regarding the construction carried out by him on the land allotted at Sumangalam Society.

###. Shri Varesh Sinha on behalf of the Society has filed an affidavit on 22nd June, 2001, which is at pages 815 to 844. His claim about the market rates cannot be accepted in view of the fact that there was no auction of the property and by private negotiations, the land was

given. Varesh Sinha, who is filing this affidavit on behalf of respondent no. 4 - Society as Secretary was a member of the Society registered at Gandhinagar i.e. respondent no. 2 which is clear from page 636 of the list submitted by the respondent no. 2 - Society at Gandhinagar to the Collector. Vide an order dated 1st August, 1990, the date on which Sanad was also issued, Varesh Sinha, the deponent was allotted plot admeasuring 250 sq.mts. being plot no. 533/1 in Sector 8. Thus, even after allotment of plot at Gandhinagar, he has obtained plot at Ahmedabad. Shri Varesh Sinha, after erecting building at Gandhinagar has given the same on rent and is earning rental income. This speaks a lot about the manner in which the property is obtained at a concessional price. This deponent has referred in Para 10 about the order made by the Court wherein allotment of 150 sq.mts. for members of respondent no. 2 - Society is indicated. It is required to be noted that Shri Prasad who was Chairman of AUDA at the relevant point of time i.e. from 16th July, 1987 in his note on a letter of Mr. C.J.Jose, Chairman of the Society stated that 150 sq. mts. of plot will be allotted to the member for erection of tenements only for residential purpose with certain conditions which we have clearly indicated earlier. There is no reference to respondent no. 4 Society. Respondent no. 4 - Society has misused the name. When plots were allotted at Gandhinagar and if there were no sufficient members, it was the duty of the Secretary or whoever was the Secretary at the relevant point of time to return the land back to the AUDA for the purpose for which it was meant, but certainly in breach of conditions indicated earlier under the Urban Land (Ceiling & Regulations) Act, 1976, the land could not have been distributed in the manner in which the land has been distributed. In Para 13, Shri Varesh Sinha has stated that membership in the Society came to be 75 or more. Contribution from the members at that time was only subscription to the share capital and admission fees, both of which totalled to Rs. 255/-. He refers to respondent no.2 - Society at Gandhinagar and this statement is absolutely false. In fact, the Society registered at Gandhinagar has made payment which is clear from the record. Receipt is also produced on record indicating that the payment was made by the respondent no. 2 - Society registered at Gandhinagar on 16.6.89. When these false averments are made by the officers, it seems that they are not only interested in taking advantage of the position and situation but they would like to continue to gain monetary benefit, despite it is being noticed that by illegal action, property has been taken in possession. He has stated in Para 13 that "This

society was not registered after obtaining the land". This is also false statement. At page 451, there is receipt dated 1st June, 1990 indicating that the payment was made on 16.6.89 and 30th May, 1990. [Sums of Rs. 6,65,000/- and Rs. 1,03,85,000/-]. The possession is given to the Secretary of Sumangalam Cooperative Housing Society which has been signed by the Secretary. Shri S. Jagadeesan was the Secretary and in the capacity of Secretary of respondent no. 2 - Society, he has also addressed a letter which is on the record of the case which we have referred earlier. He was member of the Society registered at Gandhinagar on 8.8.86 i.e. respondent no. 2 - Society. The Society registered at Gandhinagar made the payment and obviously it cannot be said that it is not within his knowledge. He is deposing on behalf of respondent no. 4 Society which was for the first time proposed under the signature of the Secretary of the Society which is at page 318. S. Jagadeesan has made a declaration, copy of which is in leaflet "U" from pages 493 to 550. At page 539, there is a declaration to be sworn by the Principal person proposing the Society. He has specifically stated in clause 4 in Para 3 of the affidavit with regard to monetary aspect that the proposed Society has opened an account in Ahmedabad District Cooperative Bank on 19.6.90 and has deposited Rs. 2550/-. There is nothing to indicate that the earlier amount was collected. It was required to be stated specifically that the amount is received and deposited in the Society. But that is not done and nothing is stated about the amount received. About the land, all necessary details have not been furnished in the affidavit such as No Objection Certificate granted by the Competent Authority or the Deputy Collector or by the Revenue Department of the State of Gujarat and that in the said letter, name of the person is indicated as person proposing the Society or not? The Society is registered on 5.7.90 and thus, he is not telling the truth.

###. Though he has referred the decision of the Division Bench and that Chairman of the AUDA has taken no interest, we have indicated at great length about the manner in which the Chairman has acted before and after. Second time, when he became Chairman, how the Society took possession is very clear and it requires no repetition. About the price, he has referred sale instances without producing any document. It is also indicated that if the land was taken by respondent no. 2 Society, the matter would be altogether different, but when the Society was formed in 1990, then price prevailing in 1990 should have been considered. That

apart, the Chairman has taken keen interest even after allotment when he became Chairman of AUDA for the second time. It is he who has put up a note that only 150 sq.mts.of land is to be allotted for constructing the tenements. He was aware about the note put up by him. These conditions if perused, it becomes clear that keeping in mind the provisions contained in Urban Land (Ceiling & Regulation) Act, 1976 and the notifications/circulars conditions were prescribed. However, after taking land, these conditions have remained on paper only. The Chairman of AUDA was aware about the circular issued by the Central Government and was aware about the condition that 200 sq.mts. of land is to be allotted and the construction is to be made for the purpose of residence only. Yet, he has taken no action. In para 22, Varesh Sinha has stated that merely because respondent no. 4 Society was not formally registered on the date of the decision to give the land to it, it cannot be said that the payment was made by the respondent no. 2 Society registered at Gandhinagar and not on behalf of the respondent no.4 Society under formation. There is no question because the respondent no. 2 - Society at Gandhinagar has made payment much earlier (P. 823), i.e. 1989. It is that Society which has made payment and therefore, it is not proper for the respondent no. 4 Society to state that the payment was made on behalf of respondent no. 4. Documentary evidence indicates that respondent no. 4 Society had no money except the amount which it had deposited in the Cooperative Bank as indicated in the affidavit of Shri S.Jagadeesan in leaflet "U". In para 25, Secretary has come out with a case that the problem was discussed with the functionaries of the AUDA. However, the same is not supported either by the Chairman of the AUDA or any officer. No letter clarifying the position has been placed on record. Shri Varesh Sinha is trying to take advantage of similar name of the Society. He has come out with a version that AUDA issued a letter on 1.3.90 indicating their decision to allot the land and addressed to Sumangalam Cooperative Housing Society at Ahmedabad. It was stated that "it was presumed that the necessary procedural formalities have been completed by AUDA". Communication was with the respondent no. 2 Society at Gandhinagar and not with respondent no. 4 Society. He has stated that inability of respondent no. 4 Society or AUDA to produce the letter regarding allotment is not of any consequence. He forgets that on behalf of AUDA, it is specifically stated that the land was allotted to the Society which made an application earlier i.e. the Society registered at Gandhinagar. Payment was made on behalf of the Society at Gandhinagar. When possession

was taken, this Society was not in existence even and the possession admittedly was given to the Society registered at Gandhinagar. The letter is crucial. When the Society has made no application where is the question of writing letter for allotment. At page 825 on what basis Shri Varesh Sinha, Secretary of the Society states that AUDA had knowledge and information about the proposed formation of respondent no . 4 Society? If he wants to prove this aspect, he should place sufficient material on record. After taking possession, if amount is paid, it would not give any legal right. Therefore, it is not necessary to discuss further aspects about the payment etc.

###. In para 3, he has admitted that an application was made seeking exemption under the provisions contained in Urban Land (Ceiling & Regulation) Act, 1976 and the State Government granted exemption on condition of filing declaration under Sec. 6. Declaration was in fact filed. Learned Advocate General has rightly pointed out that it is not open for the Society to say that the Society can act in disregard of the declaration and the provisions of law. It was bounden duty of the Society to act accordingly and to allot land not more than 200 sq. mts. to the members of the Society. If the land was in excess, it was bounden duty of the members to hand over the same to the AUDA instead of taking and distributing the same contrary to the conditions. It must be stated that in view of the provisions, there was a limit and a member cannot be allotted plot exceeding 200 sq. mts. It is the question of allotment by a Society getting land at concessional rate in view of the provisions contained in the Act. It is not by way of sale in the open market. In para 31, he has referred earlier petition which is decided in altogether different context and the fact that the relevant material was not placed and was suppressed from the Court with a view to obtain a favourable decision is required to be considered. In para 42, he has stated that the Registry of the Court has not supplied the documents referred in the order passed by the Court. It is required to be stated that the material has been supplied to all concerned. About the averments in para 42, nothing has been urged before the Court and possibly record having been supplied, the counsel has not argued the matter on this point.

###. In the affidavit filed on behalf of the respondent No.4, at page 830 paragraph 30, a statement is made that an application was made on behalf of the resp. No.4 Society seeking exemption from the applicability of the ULC Act and the State Government also granted the

exemption on condition of filing a declaration under sec. 6. We cannot appreciate such vague statements made in an affidavit. The deponent ought to have given the dates on which the application was made and the date on which the Government granted exemption. These dates having been withheld from the Court, an adverse inference may be drawn that the application was not filed by the Respondent No.4, but by the respondent No.2. Apart from that when a declaration is filed, it was with the clear understanding that not more than 200 sq. mtrs. of land will be allotted. In this view of the matter, it is clear that the officers of the Society, who were high ranking officers in the Government who were dealing with the relevant files, have acted to suit their purpose.

###. As regards the earlier proceedings being Spl.C.A. No.3082/91 and 3781/91, on behalf of the society in its affidavit at page 833 it is stated that the deponent has been given to understand that the Hon'ble the Chief Justice had summoned both the Chairman and the Chief Executive Officer of AUDA along with the file and had examined the file minutely. He has not disclosed as to from which source he has been given to understand the aforesaid. There is nothing on the record to show that these people were summoned or files were produced.]

###. It is required to be noted that the Secretary of the Resp. No.4 Society has admitted that members could get possession of the plots only in December 1992 (page 834). It is required to be noted that much before this, 42 out of the 54 members of the resp. No.4 Society were allotted land at concessional rates at Gandhinagar (pages 658 to 661). When the land was meant for neighbourhood and public housing, can it be said that the action on the part of these officers to get the lands at both the places was bona fide ?

[###. It was submitted that no one has challenged the transaction, and, therefore, there is no need to examine the allegations. It is further contended that the payment is made by the members and on payment, the land was allotted. It is further submitted that the possession was given by AUDA and allotted to the members of the Society. It was further submitted that construction is made with the permission of AUDA and in view of this, it was submitted by the plot holders that nothing is required to be done in this matter. In view of what we have indicated earlier, the transaction is a sham transaction. The land was never intended to be parted with in favour of the respondent No.4 by AUDA, and, therefore, when the application was not made by the

Respondent No.4 Society and the plot was not allotted to respondent No.4, there is no question of making such submissions. Construction is also contrary to the purpose and regulation.

###. On behalf of the respondent No.4 Society, learned counsel Mr. Trivedi submitted that it a case of poor house management or negligence, but according to him it is not a case of fraud. It was difficult for him to deny that the payment was not made by the respondent No.4 Society and that no application was made by the respondent No.4 Society. No details could be furnished by the Society to indicate that prior to allotment, the Society was already registered, or that AUDA was informed that it is a Society in pipeline or that the amount was collected and the amount was deposited in the Bank. It was not possible for him to point out any material indicating at any point of time before the amount was paid and possession was taken that the Resp. No.4 Society disclosed to AUDA that it is the Society to which the land was allotted. When we pointed out several letters written by the Resp. No.2 Society in the name of Sumangalam Society, he was not in a position to deny that in view of earlier correspondence in the name of Sumangalam Society there is similarity in the name. Resp. No.4 Society could not place any material on record that they ever informed the names of the members to AUDA. From the record it is very clear that the Resp. No.4 Society also even did not bother to inform AUDA about the names of its members till the matter was taken up by this Court. When the application was made by respondent no.2, a representation was made that they have 100 members (page 446) and subsequently it was stated that they have 150 members (page 447).

###. On behalf of the Society, it was submitted that the public authority even if has acted negligently or with connivance, it would not amount to fraud as no complaint is filed and in the absence of complaint, it should not be considered as fraud. Emphasis was placed on the earlier judgment of this Court in SCAs No.3082/91 and 3781/91. At the relevant time, before the Court, there was nothing to indicate that AUDA had knowledge that Resp. No.4 Society has taken the possession. On the contrary, it is AUDA's explicit stand that they allotted the land to Respondent No.2.

###. One Babubhai S. Shah, Chief Manager of Visnagar Nagrik Sahakari Bank Ltd., has filed an affidavit from page 1014 onwards. As regards the plot in Sumangalam Society, in paragraph 3 it is stated that Shri C.J.

Jose, the allottee of the plot in the Society, agreed to give FSI rights in favour of the Bank and AUDA has granted permission for erection of a building as well as BU Permission and the Society has also granted 'no objection certificate' for the transfer in favour of the Bank by letter dated 23.3.1988. It is further stated that the Bank has invested Rs.85 lakhs for construction, furniture etc.

###. We have hereinabove dealt with about the various constructions on the plot allotted to members.

###. At page 1050 of this affidavit, a copy of a letter addressed to Shri C.J. Jose by AUDA is enclosed. Reading the same, it appears that on 7.4.1998, the order was issued. At internal page 1052, copy of an office order dated 21.12.1998 is also produced whereby AUDA indicated that AUDA has no objection for transferring the plots and the plot will stand transferred on receiving no objection certificate from the Society. At page 1055, copy of 'no objection certificate issued by the Respondent No.4 Society dated 22.3.1999 is annexed. As stated above, one fails to understand as to how the Society could have permitted this. We have already dealt with hereinabove the legality of the resolution passed by AUDA and the permissibility of transfer, and hence, we do not reiterate the same.]

AFFIDAVITS OF FLAT HOLDERS :

###. We have also considered the affidavits filed by purchasers of the flats constructed on the plot allotted in the Society. Kamini Vaman Barot, Minesh Girishchand Dapki and Radhakrishna Koruga Shetty (who have purchased flats in the plots allotted to L. Mansinh & O. Ravi), Padminiben M. Nair, Rameshbhai Ambalal Patel (who have purchased flats in the plots allotted to S.K.. Mahapatra & R.K. Tripathi) have filed affidavits. These persons have purchased the flats by taking loan from the Bank/Financial Institution after submitting necessary documents. From the documents it transpires that L. Mansinh issued receipts from 1993 onwards, i.e. 11.12.1993 and the last receipt was issued on 15.1.1996. Similarly O. Ravi has taken amount from 1994 i.e. 25.1.1994 and the last receipt was issued on 24.2.1997. Building permission is granted in favour of L. Mansinh and O Ravi which is clear from the documents being receipt No. 134435 dated 26.5.2000. If the transaction was completed much earlier, how AUDA could have granted permission to develop the land in favour of L. Mansinh and O. Ravi? As stated earlier, the Society could not

have granted any permission for transfer of the plot. In view of this, the permission issued in the name of L. Mansinh and O. Ravi could not have been issued. These persons have also placed on record xerox copy of the order made by the Government on 21.7.1992 under section 20 of the ULC Act. The original was shown to us and the date is kept blank. That date is for the registration of the Society. It is in view of this certificate the Society could have held the land, and not otherwise. As a special case, permission was granted and direction was given to file Form VI. Thus, it is clear that they were required to plot the land as per the rules and regulation, and plot admeasuring more than 200 sq. mtrs. could not have been granted to a member of a Co-Operative Housing Society and the land is to be used exclusively for the purpose of residence by the members only. Thus, there is total breach of this provision.

SUBMISSIONS OF MR. TANNA FOR AUDA:

###. Mr. Tanna, appearing for AUDA submitted that the material question is the legal effects of the contracts entered into between AUDA and the Society, and how this is to be enforced. Where there is breach of contract, AUDA will take care of it, and he stated that AUDA will certainly take action in accordance with law. With regard to the covenant of lease deed and the prevalent rules and the purpose for which the land was given (even presuming for the sake of argument that it was given in favour of the respondent No.4 Society), whether it could be used for the purpose other than for which it was given? Emphasis was on the decision rendered by the Court earlier and in view of this Mr. Tanna for AUDA submitted that having regard to the order made by the Court, permission can be granted for the purpose of residence only. He stated that AUDA being appropriate authority, can, and should, initiate action under the Act. It is clear that irrespective of rules and regulations, if the act is not in accordance with law, action must be initiated. With regard to the permission granted much was stated about the permissible use. However, considering the fact that it was given to a Co-Operative Society for the purpose of erection of building for the purpose of residence for its members, the property cannot be put to any use other than residence.

###. When a specific question was put to Mr. Tanna about the Society which has applied for allotment and the Society to which the plots were allotted, it was fairly stated that it was the respondent No.2 Society registered

at Gandhinagar which applied for the land, was allotted the land. In view of this, the tall claim of the respondent No.4 cannot be accepted. In view of the affidavits placed on record, and reading several documents, it is clear that respondent No.4 was not put in possession. With regard to the question put to Mr. Tanna as to whether the land was granted for the purpose of residence only, and how AUDA has permitted other use, he has stated that either by error or on account of ignorance, such permission might have been granted.

###. With regard to the earlier proceedings, when we put a specific question to him, he fairly stated that before the Division Bench in the earlier proceedings, the question was about fixation of price only and no other issues were dealt with by the Court, and the Court was not called upon to determine any other question. There was no issue about Gandhinagar Society or Ahmedabad Society. He also stated that the Court was not called upon to decide the issue with regard to the provisions contained in the TP Scheme or ULC Act or various other aspects. He also stated that the allotment is in favour of Gandhinagar Society being Respondent No.2. In view of the affidavit filed by AUDA and the material placed on record, it was stated by him that the Society's name was not clear because the Society registered as Gandhinagar as 'Sumangal' and the Society registered at Ahmedabad was 'Sumangalam'. Further the Society registered at Gandhinagar (Resp. No.2) also used to address letters in the name of 'Sumangalam'. He submitted that in view of this, there was an error on the part of AUDA and according to him, that must be ignored being a bonafide mistake on the part of AUDA. According to him, AUDA came to know for the first time about the distinction between the Resp. No.2 and Resp. No.4 Societies after the present petition, and in view of the similarity in the names of the Societies, it had no reason to doubt the transaction and he submitted that allotment can be cancelled. When we put a question that if in 1990, the new Society which took over by means other than legal, would it not be appropriate to auction the property and to sell the property by way of auction and why it should not have been auctioned in 1990? His answer was that AUDA bonafide thought that it was the same Society and it is a case of negligence at the most and when transaction is based on mistake, it can be corrected or set aside.

###. With regard to neighbourhood center and public housing, he fairly stated that the plots were meant for these purposes. However, in view of the judgment delivered by the Division Bench, it was submitted that

the Division Bench considered the price aspect, the fixation of price and allotment for the purpose of residence only, and, therefore, it was given to the respondent No.2 Society and if the plots were used for the purpose of residence, then the mater would be quite different. We put a pointed question about the change of use, to which it was made clear to us that when proposal was forwarded, the intention was declared that it was for the purpose of residence. However, after the judgment was delivered by the Court, intention is changed, and there is change of user of plot, that would not help the plot holders, but that circumstances should weigh in favour of AUDA, according to Mr. Tanna's submission. His attention was drawn to paragraph 3 of the affidavit filed by Mr. Bharat Raval, CEO on behalf of AUDA at page 611. There, we find a reference to the plots reserved for public housing and neighbour hood center. At page 620, it is also indicated that the plots allotted shall be used for the purpose for which the plots were reserved. The first varied plan is at page 622. It was finalised in 1993. It is clear that the notes made in the forms under rules 21 and 35 at the bottom. Sanction has been recorded and the plots could not have been put to any other use. Section 49 puts restriction on use and development of land after declaration of the scheme. Thus, after the scheme was declared, the plot could not be put to any other use. He could not satisfy the Court that the plots could have been used for any other purpose. It is also clear from the record of AUDA itself that without permission buildings have been erected. Society has not given permission to transfer of any plots, yet plots have been transferred. The possession taken is not in accordance with law, and despite all these breaches, no action has been taken by AUDA. It was stated that AUDA will take action in accordance with law. Even after the matter was taken by this Court, the Court has not restrained AUDA from taking any action in accordance with law and yet no action has been taken by AUDA.

###. We have considered the affidavit of the Chairman of AUDA from pages 51 to 115, 724 to 727 and the affidavit of the Chief Executive Officer from pages 422-484, 553-558 and 611-626. Reading these, it is very clear that the plots which were allotted for the purpose of residential purpose, the same being not served, the Court must interfere when common people are not getting the plots for their residential use and here, and officers by various means indicated earlier, got the land but did not use the land for the purpose for which it was allotted. Out of the 54 plots, in 17 plots buildings are erected

but most of them are for commercial use and even in some cases where it is used for residence, it is not for the residence of the person to whom the plots were allotted and by taking huge amount of money, even flats have been constructed and strangers are put in possession of the plots. Thus, the purpose clearly is, for gaining or profiteering. Some have transferred the plots. Some have rented out the constructed property. Thus, public body has suffered a lot. Out of the plots, three plots are on the main road, and use is not in conformity. Permission is not sought for the use, to which it is put and the building is used for commercial purpose. Members transferred to developers or to some one else directly. AUDA could not have granted permission for any such transfer or change, but yet has not taken any action inspite of clear violation. Some have transferred the plots without even informing AUDA who is the lessor of the land. It is clear that the plots are being used for the purpose of gain. It was stated on behalf of AUDA that there are three plots which are being used as per GDCR. It is required to be noted that even if as per the GDCR the same cannot be accepted as the plots were given for the purpose of residence only and the word 'residence' is explicitly defined in the Development Act itself. It was stated that 34 plots are vacant, 9 plots are constructed as per the GDCR and 10 plots are transferred and construction is carried out in three plots in contravention of the GDCR, but not one case is pointed out where the allottee is exclusively using the premises for the residence of the allottee or his family members only. Thus, there is clear violation.

SUBMISSION OF ADVOCATE GENERAL :

###. So far as the State is concerned, it is submitted by the learned Advocate General that the State would like to see that the transactions are brought in conformity with the law. However, he submitted that the Court may examine the passage of time which is a relevant factor in a given circumstances. He further submitted that the entire case is covered by a decision of this Court in so far as the construction is concerned. 41 (3) GLR 2607 There is no enabling power and the executive action cannot be used for regulating illegal transactions. At the most the Court can grant time to bring the same in conformity. This is with regard to the use of the property. There is a specific question with regard to use for commercial purposes or unauthorized erection of building. Commercial purposes must be stopped. If the construction is unauthorized, it must be removed to the extent it is illegal. If the erection is made without

permission, opportunity should be given to them. In the instant case, having obtained permission, the same is not in conformity with the purpose for which the land was given. Transfer is not authorized in the instant case, and, therefore, according to learned Advocate General, the Court may give opportunity as third parties who are likely to be affected.

###. Mr. Vakil, learned Amicus Curiae submitted that the efflux of time may be examined, but he further submitted that whether the wrong is required to be condoned only due to efflux of time is also required to be considered. In the instant case, the executive officers were not inquiring into the matter and were not submitting their report to the State Government. Apart from the manner in which possession of the land was taken, they were aware that the land was allotted for their residential purpose only, and they cannot transfer it to anyone else. With regard to lapse of time, it was submitted that if there is a power, it can be exercised in their favour, but efflux of time should not be considered the only ground to legalise the illegalities committed by these high ranking officers and AUDA, as otherwise it will send very bad signals to the public at large. To prevent suffering by an individual, law should not be interpreted in such a way so as to permit illegalities. According to learned counsel, regularization does not mean that an illegal act should be made legal. It is open for the legislature to do it, but not for the Court. It is bounden duty of the Court to interpret the law and dispose of the matter in accordance with law. He has submitted that an illegality cannot be allowed by taking money as it is not within the competence of a development authority and that is within the competence of the legislature. Even legislature has not permitted the regularization in certain cases, which indicates the land allotted to the society for residence, is to be used for the purpose of residence only. When there is a transfer of plot, it does not mean that the Society is transferring the plot. In view of the illegalities from the beginning, i.e. from taking possession, it was submitted that such illegalities cannot be cured by regulations, more particularly when Government has allotted the plot at concessional rate and the people of the locality are deprived of the common facilities as the plot reserved for such facilities are allotted to the Society, and the people cannot be asked to suffer more and officers cannot be allowed to take advantage of their own wrong.

SUBMISSIONS ON BEHALF OF SOME OF THE OCCUPIERS:

###. M/s. A.H.Mehta, P.M.Thakker, and Asim Pandya submitted that they are also the original respondents in the main petition. Some have purchased constructed premises from a developer, who formed NTC and after developer constructed the building, the existing members one after another were made members of the said NTC; today, the association (NTC) is the owner of the land, which has purchased this land by a registered sale deed from the original allottees; it was represented by the concerned original allottee / IAS officer that AUDA has given permission to them to transfer the plot on condition of paying 10% premium.

###. It is also submitted that in other words, the NTC when it purchased the plot from the original allottee / IAS/IPS Officers, Officers had represented that he is legally permitted by AUDA to transfer the plot in question; it is not in dispute that AUDA did pass such an order in some cases. They further submitted that some are tenants of the shops, some are using premises for bank and have paid huge amount for getting the FSI right, and they are also required to be protected.

###. It is, therefore, submitted that in the above background, it would be harsh to NTC who are bona fide purchaser for value without notice, because they will be adversely affected as a consequence of this Court allowing the petition.

###. It is also submitted that under the circumstances, it would be equitable and fair if an option is given to NTC being a bona fide purchaser for value without notice to get their transaction regularized by paying the difference between the market price at the relevant time arrived at by appropriate formula and the amount actually paid by allottee for the original allotment along with an amount of premium @ 10%. It may also be appropriate to permit NTC to pay such a difference in appropriate installments so as to take away the stink of this misfortune.

###. It is further submitted that this would be without prejudice to the rights of the members of NTC to take appropriate proceedings for recovering the difference, which they may have to pay to the Government for getting their purchase regularized.

We have, under various headings recorded above, dealt with some of the submissions made by learned counsel appearing for the respondents. Most of the

counsel have argued on technical points and have thought it fit not to address the Court on the merits or facts of the case.

WHAT WOULD BE THE MARKET PRICE?

###. Considering the price at which Mr. H.K. Khan has disposed of the plot, i.e. Rs.22,00,000/- we have calculated the market price at which this plot could have been transferred by AUDA, by applying the principle of 10% appreciation in market value as pointed out in land acquisition matters by the Apex Court and this Court in various cases. Calculating on this basis, we have come to a conclusion that the price of the land allotted to Mr. H.K. Khan should be Rs.10,52,254/- as on 30.5.1990. Mr. Khan was allotted 337.5 Sq. Mtrs of land. Thus, if the price of Rs.10,52,254/- is divided by 337.5 sq. mtr., the price per sq. mtr would be approximately Rs.3117/= per sq. mtr., and we hold that Rs.3117/- per sq. mtr. shall be the market value of the plot

###. As against the aforesaid market value of the land, dividing the total amount paid to AUDA (Rs.1,37,19,689/-) by the total area of land allotted by AUDA (20151 sq. mtrs), (page 822) the price per sq. mtr. works out to only Rs.680/- per sq. mtr. It is thus clear that the plot valued at Rs.3117/- per sq. mtr. has been given away at a paltry sum of Rs.680/- per sq. mtr. Thus the difference in the market price is Rs.2437/- per sq. mtr.

###. As regards determining the market price, we would have left it to the State Government; however, in the instant case, the market price from atleast two instances (viz. H.K. Khan and B.K. Jha) are before the Court so as to arrive at a conclusion about the market price. Ordinarily, it is a known fact that price shown in the sale deeds is the 'reasonable price'. Yet, when comparing the sale price with the 'jantri' maintained by the State Government for assessing the stamp duty, it is found that the price shown in the documents is much lesser. Inspite of this, considering the intervening period of about 10 years, the Court is of the opinion that the price shown in the documents produced by Mr. Khan be taken for arriving at a conclusion as to what would be the market price. In doing so, we have only done some arithmetic work of reducing the price by 10% as the market price is already before the Court in the aforesaid document.

THE COST OF THIS PROCEEDINGS.

###. From the record produced before the Court, it is clear that (1). Smt. Gauri Kumar (2).I.P. Gautam, (3). C.I. Joy, (4). Tapan Ray, (5). V.P. Kamdar, (6).V.B. Patel, (7). P.K. Pujari, (8). Pramod Kumar (9). Ilaben Mansetta, (10). Williams, and, (11).A.M. Tiwari have been allotted plots at Ahmedabad only. Therefore, in the opinion of this Court, as the persons named above have not taken plots at both places, they need not be held liable to pay the costs.

###. The remaining 43 persons, including R.K. Tripathy and K.S. Chaturvedi, though have been allotted plots at Ahmedabad only but who have sold the same, must be held liable to pay the costs.

USURPATION OF PUBLIC PROPERTY : COURT CAN'T BE SILENT SPECTATOR?

###. We would like to quote the following portion from a very recent judgment of the Hon'ble Apex Court delivered in the case of B.L.WADHERA vs. UNION OF INDIA & ORS. dated 19th April 2002.

> "For a reasonable person, as the respondent no.7 is presumed to be, the aforesaid land should have been returned to the Gram Panchayat after public controversy had risen culminating in the filing of the present writ petition in public interest. This Court cannot remain a silent spectator where people's property is being usurped for the personal leisure and pleasure of some individuals under the self created legal, protective umbrella and the name of a Trust. A politician of the stature of Shri Chandra Shekhar cannot claim to minimise the sufferings of the people by constituting the Trust and utilising the lands taken by it allegedly for the upliftment of the poor and the oppressed."

###. In the instant case, IAS/IPS officers are the beneficiaries, who can also be presumed to be reasonable persons but have not acted reasonably - in as much as even after cognizance was taken by this Court, they have not come forward to return the land in question or to pay the market price, except Mr. K.V. Bhanujan. We therefore, had no option than to take this petition to its logical end.

SUMMARY OF FINDINGS:

[###. For a quick reference, we would like to record below some of the findings which we have recorded, at different parts of the text of this judgment:-

(a). In view of the conclusive and unambiguous version of AUDA that it allotted land and handed over possession to the Hon'ry Secretary of Sumangalam Co.Op. Housing Society (Registration No. 9675/86) who had asked for the land, it is held that the plots were allotted to Respondent No.2 and AUDA handed over possession to the respondent No.2 Society.

(b). Taking advantage of similarity in name, though land was allotted to the respondent No.2 Society, subsequently possession was taken over by the respondent No.4 surreptitiously- as respondent No.4 Society had not made any application. From this, the only inference that can be drawn is that the respondent No.2 Society also connived and permitted Respondent No. 4 to take possession of the plots illegally. It is clear that similarity of the name has been misused. A man of ordinary prudence would not have acted in a manner in which the respondents have acted.

(c). The respondent No.4 Society (having registration No. 14292) had no right whatsoever either to take possession of the land or to retain it. The office bearers of the respondent No. 4 by impersonating as office bearers of the Society which had applied for the land and which was allotted the land, by adopting dubious methods, have taken possession of the land. The respondent No.4, therefore, is a trespasser and has taken the possession without following the procedure of law and is in possession without any legal right whatsoever. In view of the settled legal position, it is clear that the respondent No.4 Society had no right whatsoever.

(d). Though from the record it is clear that the possession was given to the Respondent No. 2 Society, registered at Gandhinagar, on behalf of Respondent No.2 a wrong statement is made by Mrs. Gauri Kumar in her affidavit at pages 19-21 that it did not obtain any land. Hence, the affidavit filed by Ms. Gauri Kumar on behalf of Respondent No.2 is not true.

(e). Respondent No.4 was not in existence on the date when the land was allotted or even when the payment was made. It is clear that land could have been allotted in favour of a `Co-Op. Housing Society', i.e. the Society in existence, and not the Society in pipeline.

(f). As it is clear that AUDA allotted the land to the Respondent No. 2, i.e. the society registered at Gandhinagar and if that be so, the document executed by the society registered at Ahmedabad [Bodakdev] having Registration No. 14292 of 1990 has no value.

(g). The lease Deed executed by Mr. Jagadeesan, Secretary, Sumangalam Cooperative Housing Society Limited could not have been executed by him on behalf of Resp. No.4 as land was not allotted to it. AUDA could not have executed the lease deed in favour of the Resp. No.4 through Mr. Jagadeesan, the Secretary of the Resp. No.4 Society, or any other member of Respondent No.4 could not have misrepresented that he is representing the society in whose favour allotment has been made by AUDA.

(h). So far as the Estate Officer is concerned, there is nothing to show that the Estate Officer had an authority to sign on behalf of AUDA. So far as power to disposal of land and other properties are concerned, transactions are governed by AUDA [disposal of land and other properties], Rules 1984, produced at page 456 onwards. As per clause 3, at page 458, only Authority / Committee / Chief Executive has got powers to dispose of land and other properties by sale or lease granted in consideration of premium or rent or both for a term not exceeding 90 years in accordance with regulations. There is nothing on record to show that Authority / Committee / Chief Executive has disposed the property by way of sale or lease. Ministerial act of signing cannot be delegated.

(i). It is also clear that Respondent No.4 have taken possession of the land, though was not allotted the land. On account of similarity in the name, some of the members being the common in old and new society including office bearers, plots have been appropriated. Therefore, so-called lease cannot be allowed to stand. If such lease is acted upon or permitted to be acted upon, it would mean that the illegality is perpetuated.

(j). The office bearers of the Respondent No.4 is also guilty of distributing the plots amongst 54 persons though in all there were 77 members on whose behalf a request was made.

(k). On behalf of the respondent No.4 Society, in the affidavit dated 13.11.2000, it is stated that there was no collusion between the three Societies, in the matter of getting land from AUDA. This version cannot be accepted as in fact this respondent No.4 Society has not

made any application and the land which was granted to the respondent No.2 has been usurped by the respondent No.4 Society. This could not have been possible if there was no collusion between them. Thus the contention made on behalf of the respondent No.4 Society cannot be accepted. We hold that it was an act of connivance. It clearly appears that the societies have acted in collusion. Respondent No.2 and Respondent No.4 both are separate legal entities. It is too much that a legal entity is used as a hand-maiden by these officers to manipulate the way it has been done in this case.

(l). It was the duty of the respondent No.2 to hand over the possession back to AUDA. It could not have permitted any other Society, irrespective of the fact that some of the members were common and highly interested to take possession and allot the land to themselves. But certainly land allotted to one Society cannot be possessed by another Society without following the due procedure of law. Thus, both respondents No.2 and 4 have acted illegally.

(m). Today, because the signatories in whose favour the documents have been executed, cannot claim equity in their favour. They are the defaulting parties.

(n). Reading the accounts books and the Minutes Books, there is absolutely no doubt that the affairs of the Respondent No.4 society is run in a most shabby manner.

(o). As regards the permission granted under the ULC, even as per the submission of Mr. Shelat, learned Additional Advocate General that even after the application is made and is granted, it is not open for the Society to state that the Society can act contrary to the conditions on which such application is granted.

(p). For applicability of Section 19 of ULC Act, as the operative part refers "any vacant land held by", it must be shown that the date on which the act came into force, society was already registered and it was the owner of the land which was in excess then the prescribed limit.

(q). Even under the subsequent resolution, exemption was to be granted to the societies registered at least 2 years prior to the transfer of land and that exemption was with certain conditions.

(r). Learned counsel Mr. S.B. Vakil, Mr. S.N.Shelat, learned advocate General, as well as learned

counsel on behalf of AUDA pointed out that there is complete breach of the provisions of ULC Act, and contrary to the provisions contained in the law, land has been distributed and used. Respondent No.4, which was not a society registered before two years prior to the date of transfer, was not entitled to get exemption. For this purpose, the date is kept blank in the letter.

(s). By suppressing the existence of three societies, the plots obtained at Gandhinagar and that the land was never allotted to the Society at Bodakdev, (present respondent No.4) the Court was persuaded to deliver the judgment in these two matters. It is absolutely clear that the Court was led to believe that the land was allotted to the respondent No.4 Society and that the plots will be utilised for construction of 'tenements'. After making the Court to believe by filing an affidavit that the land is to be used for residential purpose by members of the society, and if the purpose is changed later, it amounts to nothing but playing a fraud on the Court, an abuse of the process of the Court, and falls nothing but short of perjury - by the deponent personally and by the members collectively. It also amounts to contempt of the Court more particularly when the respondent Societies are trying to take shelter under the order.

(t). The assurance given to the Court is found to have been breached by these officers.

(u). In view of the facts stated above, there is absolutely no doubt that the judgment of the earlier Division Bench was obtained by nondisclosure of relevant and material facts and documents with a view to obtain advantage, and is a fraud on the Court and, therefore, is a nullity. The respondent Societies are estopped from placing any reliance on the judgment delivered in the earlier proceedings. It is a fraud on the Court.

(v). In view of the aforesaid facts, the Court hold that the Court had been mislead so as to obtain an order in their favour in Spl. C.A. No. 3082/1991 and 3781/1991. This amounts to nothing but fraud on the court.

(w). The respondent Societies are, therefore, estopped from placing any reliance on this order. We are also of the opinion that the deponent and the members of the Society must also be proceeded against for playing fraud with the Court and consequently contempt of Court also. The order of the High Court obtained by fraud is a

nullity. We are also of the view that this affidavit amounts to perjury as apart from the aforesaid contention of 'principles of resjudicata' there are also false averments on oath.

(x). Moreover, in the facts and circumstances of the instant case, it cannot be at all said that the issues involved in this petition have been directly and substantially in issue before the earlier Division Bench which has been heard and finally decided by the court. It cannot be said that there is a decision in the judgement of the earlier Division Bench on the issues which are involved in this petition. On the contrary, it is stated before us that before the Division Bench in the earlier proceedings, the only question was about fixation of price and no other issues were dealt with by the Court and the Court was not called upon to determine any other question. That apart, as stated by us hereinabove, an order was obtained from the Court by suppressing materials facts. Hence there is no merit in the submission that this proceedings is barred by res judicata.

(y). There is also dual membership in Co-Operative Housing Societies. Most of the members are common in Respondents No.2, 3, and 4 Societies as also in Karmayogi Society. Yet affidavits are filed before the Registrar of Co-Operative Societies that they are not members of any other Co-Operative Housing Society. The distance stipulation is added for the convenience of these officers.

(z). Even assuming that the land is rightly allotted to and taken possession of by the Respondent No.4, the land can be used only for the purpose of residence by its members, and for no other purpose.

(aa). The plots could not have been utilised for any purpose without variation being made in the scheme.

(ab). Notification for variation of the Scheme was issued in the year 2000 only, and therefore development was illegal, unauthorized, without authority of law. In absence of variation at the relevant time, permission for development for the use of land for the purpose other than prescribed, is illegal and contrary to law.

(ac). Therefore, at that point of time when the AUDA allowed the change of user, AUDA had no power to do so and the subsequent variation will not validate the previous act of the authority.

(ad). Thus, for giving benefit to the high ranking officers, before lease deed came to be executed, development permission was granted in gross violation and buildings are allowed to be erected in gross violation and, thereafter, TP Scheme was varied.

(ae). In absence of any regulation made by the legislature, the Chairman cannot exercise power arbitrarily.

(af). AUDA is merely an authority for regulating the development, and not authorised to change of use or transfer of plots by charging money.

(ag). This is a case where executive officers and executive authorities of AUDA put the legislation aside, without bothering about the Judgment indicating allotment for residential use only, permitted development contrary to law.

(ah). AUDA could not have permitted the transfer by charging, as it was not within its competence. Despite the judgment delivered by the Supreme Court in the case of AUDA itself, this illegality has been committed. Therefore, such transfers are bad. Therefore, the defence taken by the plot holders to the extent that AUDA has taken fees cannot be accepted.

(ai). With a view to actively assist the high officials, even AUDA has acted high handedly in contravention of all the provisions of law. It is required to be noted that variation does not validate any permission granted earlier.

(aj). In view of the provisions of the Development Act, the plots reserved for public purposes, especially neighbourhood center, cannot not be used for any other purpose than the public purpose. Therefore, in the instant case, it is very clear that use of building is contrary to the provisions contained in the Act and Rules.

(ak). The Respondent No.4 Society is not a tenant-owner Society.

(al). Even as per the Chairman of AUDA, in the affidavit filed by him, he has pointed out that in view of "condition No.5 of Lease Agreement, lessee cannot transfer the land allotted to him".

(am). The premises of the Society, in view of the provisions contained in the byelaws and rules, even structure cannot be transferred.

(an). Considering the price at which Mr. Khan has disposed of his property, (page 949-953) it does not lie in the mouth of AUDA to say that its Town Planner has fixed the correct value. Comparing the sale price at which Mr. Khan disposed of his property with the sale prices indicated by others, it is crystal clear that they are not disclosing the correct value of the property.

(ao). This Court is of the view that the price has been determined by Mr. A. Prasad in the year 1987 itself that the land should be allotted to I.A.S. and I.P.S. officers at the price determined in 1987 by the Chairman of AUDA, who was also a member of the Society.

(ap). From the record, it appears that the officers of AUDA have not acted intelligently and diligently and might have acted negligently.

(aq). The speed in which the applications are processed, price is fixed, documents are negotiated, possession is handed over - all and more happened only because the land was to be allotted to I.A.S. and I.P.S. Association.

(ar). The dearth of action inspite of clear violation of Rules - more particularly when no explanation is submitted either by the Society or the Registrar of Co-Op. Housing Society, indicates the extent of influence exercised by these officers.

(as). Respondent No.4 Society, even assuming that the land was rightly allotted to it, was expected to give the names of the members of the Society to AUDA and if membership reduced, then it was the duty to request AUDA so that AUDA could have disposed of the plot in public auction in public interest. However, these high ranking officers distributed the land initially making a representation that there will be 100 to 150 members, and giving a list of 77 members at the initial stage, distributed the land amongst 54 members only. [Earlier demand / correspondence was not on behalf of Respondent No.4].

(at). AUDA executed the document without verification. It speaks a lot about management of AUDA. It could only be done, if these high officers had influence over the subordinate officers of AUDA. One should not forget that

the Chairman of AUDA was a member of the society. It is nothing but, a fraud played with AUDA. When fraud is there with the public authority, matter is required to be viewed very seriously.

(au). AUDA cannot change and then re-change and then again change purposes of public importance at the sweet will of the persons sitting at the helm of the affairs totally disregarding the public interest involved in it. In a State governed by the 'rule of law' can such changes be permitted to suit the desire of the certain class of people only? We have already held that AUDA is merely for regulating development and not authorised to change in use.

(av). This is a matter wherein question of public accountability is involved. Neither the officers of AUDA nor IAS/IPS members of the society have acted with bona fides.

(aw). As regards the competency of this Bench to hear this matter, this Bench is competent, and there is no merits in the submissions made on behalf of some of the plot holders.

(ax). The contentions with regard to technicalities are also required to be negatived.

(ay). In the complex state of affairs discussed in the judgment, this Court has absolutely no doubt that this PIL is maintainable.

(az). It is the duty of the subsequent purchaser to inquire from the previous purchaser as to the character of his possession at the time when the subsequent sale transaction was entered into. The burden is on the purchaser. They are required to take care.

(ba). The subsequent purchaser has to examine the title so as to ascertain the nature of claim of the person making while transferring the property and if he is not making such inquiry then he is doing so at his own risk. It is bounden duty of the subsequent transferee to inquire from the party about his title and the nature of his possession before he can be held to be a bonafide purchaser for value.

(bb). The subsequent purchaser was required to examine the documents by which the property was transferred by AUDA to the allottee. Without examining if the certifies are obtained or reliance is placed, benefit cannot be

extended based on such certificates.

(bc). In the instant case, subsequent purchasers have not inquired from AUDA as to under what conditions the plots were transferred in favour of the allottees by the Society. They have not inquired that whether the Society has granted permission to transfer by passing a resolution to that effect, more particularly when the plots were allotted to a Co-Operative Society for construction of residential premises for its members. In the absence of these enquiries, it cannot be said that proper inquiries were made. It is difficult to say that in the instant case, subsequent purchasers took reasonable care. When there was a lease deed, it was incumbent on the subsequent purchaser to examine the lease deed and inquire from the lessor about the conditions of the lease deed. When the Society has not permitted and the lessor has not permitted the transfer, it cannot be said that reasonable care has been taken by inquiring from the Society or the authorities.

(bd). Having failed to make inquiries, it cannot be said that they are bonafide purchasers. It is for them to discharge the burden. In some cases, even sale deed are not executed and merely on agreements to sell possession is parted with and, buildings have been erected. In such cases, there is no legal and proper conveyance even.]

FINAL ORDER AND DIRECTIONS:

###. Having considered the material placed before us and having heard the learned advocates appearing for the respective parties and the learned amicus curiae, our answer to the questions referred to hereinabove, and consequent directions, are as under:-

(1). (i). Possession taken by the Respondent No.4 Society in the name of Sumangalam Co-Op. Society, Bodakdev, Ahmedabad (Regn. No. 14292 dated 5.7.90) , by using almost similar name to that of Respondent No.2 and without disclosing that the possession is taken by a Society which has not applied for the land, is held to be not in accordance with law.

(ii). The office bearers of the respondent No. 4 by impersonating as office bearers of the Society which applied for the land and which was allotted the land, by adopting dubious methods, have taken possession of the land and executed the lease agreements and deeds.

(iii). For these and the other reasons recorded in this judgment, the possession receipts dated 1.6.1990 and 26.02.1991 (for 16,571 sq. mtrs and 3923 sq. mtrs respectively) executed by and between AUDA and the Respondent No.4 Society are hereby quashed and set aside. Consequently, the lease agreement and the lease deeds executed by and between AUDA and the Respondent No.4 Society are declared null and void, and are hereby quashed and set side.

(iv). Consequent upon quashing of the Possession Receipts and also the lease agreements and the lease deeds, the possession of the land, i.e. the subject matter of this litigation, viz. Final Plots No.694 admeasuring 2739 sq. mtrs, Final Plot No. 695 admeasuring 12516 sq. mtrs and Final Plot No. 696 admeasuring 5239 sq. mtrs of of TP Scheme No. 1 Bodakdev, with all superstructures thereon, shall forthwith vest in the State Government and possession shall be taken by the State Government and the Respondent No.4, its Chairman, Secretary, Office bearers, members, employees, representatives and agents shall deliver the possession to the State Government forthwith.

(v). The State is directed to report the same to this Court within sixty days from today.

Open plots

(vi). Qua the open plots, AUDA is directed to repay the principal amount paid by the allottee as set out hereunder.

(vii). If the holder of the open plot has not been allotted a plot at Gandhinagar, and he is not willing to purchase the property on the terms and conditions which are stated hereinafter, AUDA shall repay the principal amount to such person with 9% simple interest from the date the allottee made the payment to the Society for the land till the actual date of payment by AUDA. However, if the holder of the open plot has been allotted a plot at Gandhinagar at concessional rate, AUDA shall pay only the principal amount paid by the member.

Option to Open Plot holders:

(viii). The persons who are allotted plots only at Respondent No.4 and not at Gandhinagar shall be permitted to purchase the plot allotted to him by the society if he files a declaration to the effect that

neither he nor any of his family member is allotted a plot at concessional rates for residential accommodation in the State of Gujarat and if he is ready and willing to pay the difference of Rs.2437/- per sq. mtr with interest at 9% p.a. from the date such allottee was allotted the plot by Respondent No.4 till the date of actual payment.

(ix). It is made clear that the persons who have got plots at concessional rates at Gandhinagar either in his name or in the name of any of his family members shall not be entitled to get the advantage of this direction even by paying market price.

(x). During the hearing of this matter, only Mr. K.V. Bhanujan has come forward with an offer to surrender his open plot. We therefore direct that on Mr. K.V. Bhanujan surrendering his open plot, even though he has been allotted a plot at Gandhinagar, the AUDA shall repay the principal amount paid by him to AUDA towards the cost of the plot with 9% interest from the date of payment made by him to AUDA till the date of actual payment.

PLOTS WITH CONSTRUCTION:

As regards the plots on which construction is made, the occupiers of the properties are either tenants, owners of shops and office or the flat owners. Though we have recorded a finding that there is negligence on the part of the third parties while purchasing the constructed premises, we are equally concerned with protection of their interest.

Construction used for exclusive residence of allottee & no plots allotted at Gandhinagar:

(xi). If the construction is used exclusively for the purpose of self-residence of the original allottee and for no other purpose, provided if such plot holder or any member of his family is not allotted any land at Gandhinagar, then such plot holder will be entitled to purchase the plot on payment of the difference of Rs.2437/- per sq. mtr. with interest at 9% p.a. from the date on which such allottee was allotted the plot till the date of actual payment. Such payment shall be made within a period of sixty days. However, the Committee referred to hereinafter may consider a reasonable request for installments.

Construction used for exclusive residence of allottee & plots allotted at Gandhinagar:

(xii). If the entire construction is used exclusively for the purpose of self-residence and for no other purpose and if such plot holder or any member of his family is allotted a land at Gandhinagar, then such plot holder will be entitled to retain possession of the plot at the Society if he surrenders the plot at Gandhinagar to the Collector Gandhinagar and pays the difference of Rs.2437/- per sq. mtr. with interest at 9% p.a. from the date on which such allottee was allotted the plot to the date of actual payment.

Sold the plots allotted at Ahmedabad & Gandhinagar both:

(xiii). If a person was allotted plots at the Society and at Gandhinagar and if such person has disposed of both the plots or is not using for his own residential purpose, the Government shall forthwith initiate proceedings to recover the amount of difference Rs.2437/- per sq. mtr. with interest at 15% p.a. from the date such allottee was allotted the plot to the date of recovery of the full amount. The amount shall be recovered by the State Government and report shall be made to the Court by the State Government within sixty days.

Plots sold for construction of flat / commercial premises

(xiv) As regards the plots which are sold by the original allottees on which flats and commercial premises are constructed, the Government shall forthwith initiate recovery proceedings against the persons who have sold the plots allotted to them and recover from them the amount of difference of Rs.2437/- per sq. mtr. with penal interest at 15% p.a. The amount shall be recovered by the State Government and report shall be made to the Court by the State Government within sixty days.

(xv). We are of the opinion that the present occupiers of the constructed premises should be given an option to purchase the premises. In order to assess the price payable by the present occupiers, the Government is directed to constitute a Committee consisting of the Chief Secretary, an Architect of repute who has experience of planning but who is not connected with building activities either directly or indirectly, a reputed Civil Engineer and also a reputed Valuer for the

purpose of valuation of the constructed property. This Committee shall be constituted within two weeks and shall continue to function till the entire work is completed. The Committee shall value the price of the constructed premises and the occupiers shall be given an option to purchase the property at the price which may be suggested by the Committee and on execution of a document by the officer appointed by the State Government in this behalf. On payment of the price suggested by the Committee, the occupier will become the owner of the property in accordance with law. In case of flats or shops, he shall get the rights under the provisions contained in the Bombay Non-Trading Corporation Act 1959 or Gujarat Ownership Flats Act, 1973 or Gujarat Cooperative Societies Act, as the case may be. The principal amount paid by the occupiers originally for purchase of the constructed premises will be given credit.

(xvi). From the amount so collected from the occupiers, the State Government shall adjust the difference of Rs.2437/- per sq. mtr. with penal interest at 15% p.a. from the date such allottee was allotted the plot till the date of recovery of the full amount and return the remaining amount, if any, to the original allottee.

(xvii). We may clarify that if the occupiers of the building constructed over the plot/s, individually or collectively, are agreeable to pay the difference of the price at Rs.2437/- per sq.mtr. with penal interest at 15% p.a. and make the payment within sixty days from today, the Committee need not undertake exercise in case of such plots. We further clarify that in such an event, it will be open for the purchaser/s to recover the aforesaid amount from the original allottee of the plot.

(xviii). As the size or the location of the premises held by each member may be different in some cases, they will be required to pay the value of the property determined by the Committee in a proportion agreed between them. In case these members are not able to arrive at an agreement and such recovery is not possible for this or any other reason, in such case, the Committee shall determine the value of the entire property. The State Government and the Committee shall determine the amount payable by occupier for his occupation but in any case, it shall not be less than the amount which such occupier is paying by way of rent/fees for occupation, and such amount shall be paid regularly. On failure to pay the amount aforesaid regularly, the property being vested with the Government, the action

under the Public Premises Eviction Act be initiated.

(xix). If the second mode of recovery could not be resorted to, the Government shall initiate proceedings in accordance with law against the original allottees (even if they have retired from service) for appropriating the amounts due to them. In case of non recovery, the State Government shall record the reasons for the same and shall submit a report to this Court within a period of six months.

(xx). It is clarified that in cases where tenants are required to pay the amount towards the market value of the plot, the rent paid by them and deposited in the Bank pursuant to the interim orders passed by this Court shall also be taken into consideration and given credit in case of purchase of the property. AUDA shall forthwith transmit to the State Government the amount of rent lying in the bank account and shall continue to do so regularly till the property is transferred to the occupiers by the State in compliance with the directions contained herein.

(xxi). The Committee constituted in terms of the aforesaid direction shall formulate a scheme for the utilisation of the aforesaid open plots. Such scheme shall be considered, approved and implemented by the State Government and appropriate orders may be passed in accordance with law for implementation of the scheme formulated by the Committee. The Committee, while formulating the scheme shall take into consideration the relevant provisions of law. In case of use for any other purpose, the reasons be recorded in writing and shall submit a report to this Court in this regard within sixty days from today.

(xxii). The State is entrusted with the property for administration, such as for disposal of plots/execution of documents etc., and to act as per direction of the Court contained herein. The proceeds, after deducting the expenditure incurred by the State for administration, shall be remitted to AUDA.
(added as per order passed in this matter on 30.4.2002.)

(2). The development permission granted by AUDA to develop the land reserved for `neighbourhood centre' and `public housing' is not in accordance with law. Even assuming that the allotment of land was legal and valid, the land was allotted with a specific condition that no development permission shall be granted till the variation is made, officers of AUDA, totally ignoring

this, have granted development permission.

(i). AUDA is directed to immediately initiate departmental proceedings against the persons who granted development permission, BU permission, NOC etc. in this case before the variation in the scheme was sanctioned by the State Government, and to place its report before this Court within sixty days from today.

(ii). AUDA has also granted permission for change of user and development etc. by charging fees, which is not in accordance with law. It is, therefore, directed that AUDA shall conduct an inquiry and fix responsibility of the officers who have illegally permitted such change, the State Government/AUDA shall take appropriate actions against such erring officers and/or Chairman for their negligence. State Government/AUDA is directed to report to this Court about the actions taken within sixty days from today.

(3). Even assuming that the land was rightly allotted to and taken possession by the respondent No.4. the plots, in view of the specific conditions, could not have been transferred by the allottee to any other person.

(i). The Secretary of the Society, Mr. Varesh Sinha, has issued `No Objection Certificates' for transfer of the plots without the same being supported by a resolution of the Society and without transferring the shares. For this act of Mr. Varesh Sinha, the Registrar of Co-Operative Societies shall forthwith initiate action against Mr. Varesh Sinha, and shall report the same to this Court within sixty days from today.

(4). The earlier judgment in Special C.A.s No.3082/91 and 3781/91 was obtained by practising fraud and by suppressing relevant and material facts, which also amounts to contempt of Court.

(i). Registrar is directed to initiate prosecution against Mr. S. Jagadeesan as by filing an affidavit in the aforesaid matters in the Court, he has practised fraud upon the Court. As against the true fact that the land was applied for and allotted to the Respondent No.2, a show was made before the Court that it is the Respondent No.4 which applied for the land and the land was allotted to it; and, after obtaining an order from the Court by stating on oath that the land is to be utilised for residential use, a further fraud is played on the Court by using some plots for the purposes other than residential (including his own plot).

(ii). Shri Varesh Sinha and Mrs. Gauri Kumar have also made false statements on oath before this Court and the Registrar is directed to initiate prosecution against them also.

(5). The plots have been obtained by undue influence, fraud, misrepresentation and suppression of an important fact that most of its members were allotted plots at Gandhinagar whereby they have snatched away valuable plots reserved for public purposes and have retained by making false declaration before the Court through Secretary of the Society and by committing various irregularities and illegalities. Hence the principles of public accountability is applicable in the instant case. Therefore, as stated hereinabove, the 43 persons out of 54 members who were allotted lands at Gandhinagar as well as in the respondent No.4 Society or who have transferred plots/possession of the plots in Resp. No.4 Society, are held liable to pay Rs.20,000/- each. They shall deposit this amount in this Court within four weeks from today. Upon deposit of the amount, the Registry shall transmit the same to the Government.

(6). There is violation of Urban Land Ceiling Act in allotting more than 200 sq. mtrs. of land to the members of the respondent No.4. We could have directed the appropriate authority to initiate action for the same; however, as we have quashed and set aside the lease agreements, the lease deeds and the allotment of the land, only with a view to avoid multiplicity of proceedings, we do not issue any directions to initiate action for the same.

(7). Question No.7 has already been answered. AUDA has not passed any resolution granting lease of land to Respondent No.4. The allotment of the land having been quashed, no further order is required to be passed on this count.

(8). The Respondent No.4 Society has obtained the lease from AUDA by misrepresentation and fraud. However, the allotment of the land having been quashed, no further order is required tobe passed on this count.

(9). The allotment of the plot by the Resp. No.4 to its members are in contravention of the provisions of the Co-Operative Societies Act.

(i). It will be for the Registrar of Co-Operative Societies to consider and to take appropriate action under the relevant provisions of law,

against the common promoters of the respondents No. 3 and 4 Societies, and also against those members who are common in the respondents No. 2,3 and 4 Societies and Karmayog Society and who have filed affidavits before him that they are not members of any other Co-Operative Housing Societies.

(10). The respondent No.4 Society and its members have committed breach of the terms and conditions of the lease agreements and the lease deeds. However, since we have quashed the same and issued directions hereinabove, no further direction is required to be passed in this regard.

(11). The question No.11 is answered in the affirmative, and the action to be taken is also directed hereinabove. Hence no further order is required to be passed in this regard.

(12). All the three plots, Final Plot Nos. 694, 695 & 696, the subject matter of this petition, shall vest in the State Government till it takes a decision considering the recommendation of the Committee and the option is exercised by the person concerned and documents are executed in this behalf by and between the State Government and concerned occupier.

(i). As regards the transfer of property by way of agreement to sell, and not by executing sale deed, we could have directed the appropriate authorities to take action, but with a view to avoid multiplicity of proceedings, we do not pass any order regarding such cases.

(ii). Since the plots in question will be sold at market price pursuant to the directions contained herein, in view of the peculiar facts and circumstances of the case, it is directed that all the existing constructions on the plots in question and the construction that may come up hereafter, shall be used only for the purposes permissible under the GDCR in the residential zone. The State and AUDA shall ensure compliance of this direction and if any premises is used for purposes other than the purposes permissible under the GDCR in the residential zone. Premises shall be sealed, after 15 days notice to the occupier, which shall be served forthwith, if used contrary to permissible use and for which Development Permission was not granted. It is further directed that existing building or part of it shall be demolished if the building or part of it is not in accordance with the GDCR after following the procedure.

The petition stands disposed of with the aforesaid directions.

[C.A. No.11020/00 is filed by Sumangalam Building Occupiers' Association for clarification/extension of time to file replies to the notices and restrain AUDA from taking coercive measures against the occupiers. The said application does not survive, and stands rejected accordingly.

#. C.A. No.788/01 is filed by ICICI Bank for permission to occupy and premises which are in its possession in sub plot No.17 of final plot No. 695. The prayer does not survive in view of the directions given hereinabove.

###. C.A. No.853/2001 filed by HDFC Bank Ltd and CA No. 962/2001 filed by Kamlesh P Savaliya & Ors., C.A. No.963/01 filed by Rajnikant J Mehta & Others, C.A. No.966/01 filed by Kaminiben Vamanbhai Barot & Ors., C.A. No.967/01 filed by Manekchandra C Sadhu & Ors, are for joining them as respondents in this petition. In view of the public advertisement calling upon all members of the Resp. No.4 Society / allottees of the plots and occupiers of the plots and superstructures put upon the plots to appear before the Court and file necessary documents, there is no need to separately grant this application. This application is rejected accordingly.

###. C.A. No. 1287/01 and C.A. No. 1219 of 2001 are filed by Shashang Infrastructure Pvt. Ltd., the first praying for a clarification and the later for permission to be owner/lessor of the premises of the basement and ground floor of sub plot No.17 of Sumangalam Society on Final Plot No. 695. In view of the directions given by us hereinabove, there is no need to pass any separate orders on these Civil Applications and both the Civil Application stands rejected accordingly.]

###. Before parting with this Judgment, we appreciate and thank Mr. S.B.Vakil, learned counsel, for sparing his valuable time for rendering service to the Court as amicus curiae. We also thank Mr. S.N.Shelat, learned Advocate General for rendering assistance to the Court in the matter.

(B. C. PATEL, J.)

(RAVI R. TRIPATHI, J.)
csm./

NOTE:

[This being a lengthy judgment, and having discussed the issues under various headings, - though there are overlappings and the discussion is not strictly confined to the headings-, we think it appropriate to indicate the headings, relevant paragraphs and page numbers in a tabular form in this note as an attachment to this judgment. This would facilitate a quick reference to the relevant discussions. The headings, relevant paragraphs and page numbers are as under:

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